

tion of the record below and the appeal briefs and after full consideration of the issues of fact and law presented, the Commission has concluded that the initial decision is correct except that the initial decision shall be modified by striking the third paragraph of Finding 17 at pages 7 and 8 [p. 682, 683 herein] of the initial decision. Accordingly, and as so modified,

It is ordered, That the initial decision of the hearing examiner, including the findings, conclusions, and order, be, and hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents shall, within sixty (60) days after service of the order herein upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

CLAIROL INCORPORATED

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

Docket C-832. Complaint, Sept. 15, 1964—Decision, Sept. 15, 1964

Consent order requiring a major manufacturer of hair coloring and other beauty aids to cease discriminating in price between its customers competing in the same market area, and preticketing its products with deceptive prices.

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 subsection (a) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13), and Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Clairol Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1290 Avenue of the Americas, New York, New York. Respondent Clairol Incorporated is a wholly owned subsidiary corpora-

tion of Bristol-Myers Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 630 Fifth Avenue, New York, New York.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of beauty preparations, principally hair coloring products, hereinafter collectively referred to as beauty products. Respondent is now and has been, at all times referred to herein, one of the largest concerns in the United States in volume of sales of hair coloring products. Respondent sells its beauty products throughout the United States to a large number of customers purchasing such products for use, consumption, or resale. Respondent's customers include beauty salons, beauty supply dealers, beauty schools, department stores, drug wholesalers, and drug retailers.

COUNT I

Alleging violation of subsection (a) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13) :

PAR. 3. Respondent sells and distributes its beauty products in commerce by causing said products to be shipped from its manufacturing plant located at Stamford, Connecticut, and to and from a warehouse located at Los Angeles, California, to purchasers thereof located in the several States of the United States and the District of Columbia. There is now and has been, at all times mentioned herein, a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent is now, and has been, in substantial competition with other corporations, individuals, partnerships and firms, engaged in the manufacture, sale and distribution of beauty products, many of which are also engaged in commerce between and among the various States of the United States and the District of Columbia.

Many of the purchasers of respondent's products and customers of some of said purchasers are in substantial competition with each other in the use, consumption, distribution, or resale of said products within the trading areas where such purchase or customers of purchasers are located.

PAR. 5. During the period from April 1959, to the present, respondent, in the course and conduct of its business in commerce, has discriminated in price between different purchasers of its beauty products of like grade and quality by selling to some of its purchasers at prices substantially higher and less favorable than the prices charged to other

of its purchasers, some of whom are in competition with the favored purchasers in the use, consumption, distribution or resale of said products.

For example, respondent has classified certain of the purchasers of its products as beauty salons "chain," beauty jobbers, and beauty salons "non-chain." In making sales to the aforesaid beauty trade, respondent has designated a basic price known as "List Price" or "Regular Price" from which all trade discounts are calculated. On certain of respondent's largest volume products, beauty salons classified as "chain" pay "List Price" or "Regular Price" less a discount of forty (40) per cent and fifteen (15) per cent; whereas, beauty jobbers and beauty salons classified by respondent as "non-chain" pay "List Price" or "Regular Price" less a discount of only forty (40) per cent. On other of respondent's products the beauty salons classified as "chain" pay "List Price" or "Regular Price" less a discount of thirty-three and one-third ($33\frac{1}{3}$) per cent and fifteen (15) per cent; whereas, beauty jobbers and beauty salons "non-chain" pay "List Price" or "Regular Price" less a discount of forty (40) per cent.

PAR. 6. The effect of the 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 respondent is engaged, and in which said favored purchasers are engaged, or to injure, destroy or prevent competition with said respondent, or its purchasers who receive the benefits of such discriminations.

PAR. 7. The foregoing alleged discriminations in price made by respondent Clairol Incorporated in the sale of its products are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act:

PAR. 8. Paragraphs Three and Four of Count I are incorporated herein by reference and made a part of this Count as fully and with the same effect as if set forth herein verbatim, except that the reference to the Clayton Act, as amended, is eliminated herein, and reference to the Federal Trade Commission Act is substituted therefor.

PAR. 9. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its beauty products, respondent has made numerous statements in brochures and in sales material with respect to the prices of its said products and the savings resulting to purchasers of such products.