

Complaint

IN THE MATTER OF

A. KIMBALL COMPANY, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2329. Complaint, Mar. 15, 1935—Decision, Dec. 15, 1936

Where the corporate manufacturers of practically the entire supply of pin tickets in the United States, which they theretofore offered at prices determined by competition among them and, in many instances, at varying prices—

Met, discussed and compared, and came to an agreement and understanding to fix, and did fix, and thereafter charge and maintain uniform prices for their said products;

With result that they were thereby caused to offer and sell such competitive products at uniform prices, and of substantially restricting price competition among them and maintaining artificial price level:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John L. Hornor* and *Mr. William C. Reeves*, trial examiners.

Mr. Robt. M. McMillen for the Commission.

Mr. Abraham A. Silberberg, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that A. Kimball Company, a corporation, The Reyburn Manufacturing Company, a corporation, Waterbury Buckle Company, a corporation, American Tag Company, a corporation, Dancyger Safety Pin Ticket Company, a corporation, Adam Sutcliffe Company, a corporation, and Noesting Pin Ticket Company, a corporation, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, 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 in that respect as follows:

PARAGRAPH 1. A. Kimball Company is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at 307 West Broadway, New York City.

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The Reyburn Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business at Allegheny Avenue and Thirty Second Street in the city of Philadelphia in said State.

Waterbury Buckle Company is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business at Waterbury in said State.

American Tag Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business at 6151 South State Street in the city of Chicago in said State.

Dancyger Safety Pin Ticket Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal place of business at 4707 Detroit Avenue in the city of Cleveland in said State.

Adam Sutcliffe Company is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with its principal place of business at Central Falls in said State.

Noesting Pin Ticket Company is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at Mount Vernon in said State.

PAR. 2. All of the above named respondents are and for a number of years past have been engaged in the manufacture of pin tickets. These are small tickets for temporary attachment to clothing, fabrics, and like materials, by pin-like fasteners. Upon these tickets the dealer customarily endorses cost and selling price, stock number, and other information and identifying marks. Respondents sell this product to and through jobbers and direct to users located throughout the United States, and pursuant to such sales, and as a part thereof, shipment is regularly made to customers from the respective places of business of respondents through and into other States of the Union. These respondents represent practically the entire source of supply of pin tickets in the United States and their annual sales aggregate about \$750,000. But for the matters and things hereinafter set out, said respondents would be in active competition with one another for business.

PAR. 3. In or about the year 1931 respondents entered into an understanding, combination, and conspiracy among themselves for the purpose of restricting and restraining competition in the sale of their said product. Pursuant to such understanding, combination and conspiracy, respondents did and performed and still do and perform the following acts and things:

(a) Met and discussed and compared prices at which they were selling their said product and came to an understanding that they would quote uniform prices to the using public, and pursuant to such understanding and agreement did quote uniform prices and did sell to the public at such prices.

(b) By understanding and agreement from time to time changed said prices but continued to make the same uniform throughout the industry.

(c) Conferred and cooperated with one another for the purpose and with the effect of ascertaining when and by whom prices so fixed were departed from, and used persuasive and other methods to compel offending manufacturers to resume the uniform schedule of prices.

(d) Used other cooperative methods and means for making and keeping prices uniform and for preventing any price competition among themselves.

PAR. 4. The result of the formation of said understanding, combination and conspiracy has been and is to restrict and restrain competition among the manufacturers of pin tickets; to constrain all such manufacturers to sell at a price uniform with every other manufacturer and to keep prices at an artificial level.

PAR. 5. The acts and practices charged are to the prejudice of the public, and the formation of said understanding, combination and conspiracy and the things done thereunder, as herein charged, constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Congress hereinabove entitled.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on March 15, 1935, issued and served its complaint in this proceeding upon respondents A. Kimball Company, The Reyburn Manufacturing Company, Waterbury Buckle Company, American Tag Company, Dancyger Safety Pin Ticket Company, Adam Sutcliffe Company, and Noesting Pin Ticket Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondents' answers thereto, the attorney of record for all said respondents tendered and entered into a stipulation as to the facts with the Chief Counsel for this Commission, subject to the approval of the Commission, by

which it is agreed that the statement of facts therein contained may be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint, and in opposition thereto; and that the Commission may proceed on said statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceedings without presentation of argument or the filing of brief; which said stipulation has been by the Commission approved. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, and the said stipulation and statement of facts, and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. All of the respondents above named are now, and were at all times hereinafter mentioned, corporations duly organized under the laws of the States of New York, Pennsylvania, Connecticut, Illinois, Ohio, Rhode Island, and New York, respectively, and each of them is and has been engaged in the manufacture and sale of pin tickets. Pursuant to such sales and as a part thereof respondents have regularly made shipments of said products from their respective places of business through and into States of the United States other than the States of the points of origin of such shipments. The pin tickets manufactured and sold by each respondent have been and are similar to and for the same or similar use and purpose as the pin tickets of all other respondents; they seek and have sought to sell the same to the same trade; and all dealers in and users of pin tickets in the various States are and have been customers or potential customers of each and all of the respondents. Respondents manufacture and have manufactured practically the entire supply of pin tickets in the United States.

PAR. 2. Prior to the year 1931 these respondents had been offering for sale and selling competitive pin tickets at prices determined by competition among them, and these prices in many instances varied as among said respondents. In the years 1931, 1932, and into 1933 these respondents held a series of meetings from time to time at which they discussed and compared prices at which they were offering for sale and selling competitive pin tickets, and at and by means of said meetings and discussions came to an agreement or understanding to

fix the prices at which they would, and did thereafter, offer for sale and sell competitive pin tickets, which prices were uniform as among respondents. From time to time thereafter, pursuant to such understanding, they uniformly changed said prices.

PAR. 3. The result of said meetings and discussions and understandings, and the things done pursuant thereto, as above stated, has been to cause and to tend to cause respondents to offer for sale and sell competitive pin tickets at prices uniform among them, and to substantially restrict price competition among them, and to keep prices at an artificial level.

CONCLUSION

The aforesaid acts and practices of the respondents are to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, and a stipulation and statement of facts in support of the allegations of the complaint and in opposition thereto, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondents, A. Kimball Company, The Reyburn Manufacturing Company, Waterbury Buckle Company, American Tag Company, Dancyger Safety Pin Ticket Company, Adam Sutcliffe Company and Noesting Pin Ticket Company, their officers, representatives, agents, and employees, in connection with the offering for sale and sale and distribution of pin tickets in interstate commerce, or in the District of Columbia, do forthwith cease and desist:

1. From entering into any agreement or understanding among themselves, or between any two or more of them, or between any one or more and others, to fix the prices at which they would offer for sale or sell pin tickets;

2. From entering into any agreement or understanding among themselves, or between any two or more of them, or between any one or more and others, fixing the prices at which they would offer for sale or sell pin tickets;

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3. From restricting or suppressing competition among themselves or any of them, or with others by any other similar concert of action;

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

THE LEADER NOVELTY CANDY COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2789. Complaint, Apr. 28, 1936—Decision, Dec. 15, 1936

Where a corporation engaged in sale and distribution of candy and candy products, and in manufacture, sale, and distribution of novelty toys to wholesale dealers, including so-called "break and take," "draw" or "deal" assortments, sale of which type, in competition with the exclusively "straight" merchandise of many candy manufacturers and distributors, has been followed by a marked decrease in latter, due to gambling or lottery feature connected with former, and which assortments consisted of (1) package of individually wrapped penny pieces of uniform size and shape, color of a few of which differed from that of the majority, and (2) package of novelty toys such as water pistols and rubber return balls, ordinarily sold and billed by it separately to wholesaler and jobber vendees, but not separately at same price assigned each package for sale together, and usually identical in number, so that such respective packages might be displayed side by side as a single unit and sold under a plan by which chance purchaser of one of said penny pieces, concealed color of which differed from that of majority, additionally received, for his penny, one of aforesaid toys—

Sold to wholesalers or jobbers said "break and take," "draw," or "deal" assortments, so assembled and packed by it that they were and might be sold by retail dealers to purchasing public as single unit, as hereinbefore set forth, and as a lottery or gaming device, for resale to their numerous retailer purchasers thereof, by whom the respective packages, as packed by it and as a single unit, were displayed and candy involved sold and distributed to consuming public as hereinbefore set forth, and by lot or chance; contrary to public policy, and in competition with many who regard such methods of sale and distribution as morally bad and as encouraging gambling, and especially among children, as injurious to the candy industry in resulting in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with the means of violating the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can be resold to public by lot or chance;

With result that sales of "straight" goods of such unwilling and refusing competitors, who could compete on even terms only by furnishing the same or similar assortments, showed a continued decrease and they were put to a competitive disadvantage, and trade was diverted from them to it and others using similar methods:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Victor Warren Milch, of New York City, for respondent.