

IN THE MATTER OF
CHRISTMAS CLUB

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SECS. 3 AND 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY SEC. 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3050. Complaint, Feb. 5, 1937—Decision, Sept. 30, 1937

Where a corporation engaged, for more than three years last past, in the sale, in commerce among the various States and in the District of Columbia, of pass books, account books, advertising literature, and other paraphernalia for use by banks and trust companies in their conduct of Christmas Clubs and other savings systems, in substantial competition with others engaged in sale in commerce of systems for use by banks and trust companies and their depositors in the conduct of such clubs and other savings systems, and, as thus engaged, in furnishing such systems for such purposes to more banks and trust companies for their use than any of its competitors, with annual revenues from such activity during aforesaid period likewise exceeding that of any other of said competitors—

- (a) Represented that it had the right to the sole and exclusive use of name or phrase "Christmas Club" for its said systems, and that said name had been trade-marked by it for use thereon, facts being that, while it was owner of registered trade-mark "Christmas Club" for use as magazine title, said name or phrase had not been registered by it as trade-mark for its said system, nor had it established in any court of competent jurisdiction its sole and exclusive right to use of name or phrase in question thereon;
- (b) Represented that it was the manufacturer and printer of its said systems, through inclusion in certain of its contract forms of statement that its said systems would be shipped f. o. b. its factories, facts being that approximately ninety-five percent of its said systems, furnished by it to banks and trust companies, were made for its order by manufacturing printing concerns in which it had no financial or other interest, while approximately five percent thereof were printed by affiliated corporations, stock of which, along with a part of its own stock, was held by another concern;
- (c) Represented that it had spent, over a period of time, more than \$3,500,000 in promoting the Christmas Club name and idea among the banks and people of the United States, facts being said figure represented an arbitrary fraction of the total selling expenses, other than cost of goods sold and executive selling expenses over a period of years, of itself and certain other companies, assets of which had been acquired by it;

With capacity and tendency to mislead certain banks and trust companies purchasing such systems from it into believing that such representations as aforesaid, as to such right to use of said name or phrase and as to manufacture of said systems, were true, and to induce them to buy such systems from it in such erroneous belief, and as manufactured and printed by it, and with effect of inducing banks and trust companies to purchase said products from it without knowing sense in which word "promotion"

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was used, and of diverting trade to it from its competitors; to the substantial injury of substantial competition in commerce:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition in commerce within the intent and meaning of said Section 5 of an Act of Congress approved Sept. 26, 1914; and

Where aforesaid corporation, engaged as above set forth—

(d) Entered into contracts for and made sales of its said systems on the condition, agreement, and understanding that purchaser thereof should not purchase or deal in the systems of a competitor or competitors, under contracts, many of which were for term of seven years and provided that the bank or trust company concerned should purchase such systems from it exclusively;

With result that companies having such contracts with it, by reason thereof, did not buy systems of competitors, and with the result that effect of such contracts had been and was to substantially lessen competition or tend to create a monopoly in it:

Held, That such acts and practices, under the circumstances set forth, constituted violation of the provisions of Section 3 of an act of Congress approved Oct. 15, 1914; and

Where aforesaid corporation, engaged as above set forth—

(e) Discriminated in price through failing to provide for payments on the same percentage basis in contracts entered into and carried out by it with banks and trust companies, providing that it would furnish such systems, of like grade and quality, to each bank or trust company and would accept in payment therefor a percentage of the deposits in the Christmas Club of the particular company, with the particular company, as the case might be, privileged under the terms of such contracts to requisition unlimited quantities of said systems from it, regardless of rate of percentage paid by it or regardless of the total deposits in its Christmas Club;

With the result that the effect of such discrimination in price between different purchasers of systems of like grade and quality had been and was to substantially lessen competition or tend to create a monopoly in interstate commerce in such systems:

Held, That such acts and practices, under the circumstances set forth, constituted a violation of the provisions of Sec. 2 (a) of an act of Congress approved Oct. 15, 1914, as amended by Sec. 1 of an Act of Congress approved June 19, 1936.

Before *Mr. John W. Norwood*, trial examiner.

Mr. Edward L. Smith for the Commission.

Cravath, DeGersdorff, Swaine & Wood and *Mr. Henry G. Walter, Jr.*, of New York City, and *Mr. Richard H. Wilmer*, of Washington, D. C., for respondent.

COMPLAINT

Count I

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,"

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the Federal Trade Commission, having reason to believe that Christmas Club, a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Christmas Club, a corporation, 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 at 341 Madison Avenue, New York City in said State. It is now and for more than three years last past has been engaged in the sale of passbooks, account books, advertising literature, and other paraphernalia for use by banks and trust companies in the conduct by them of Christmas Clubs and other saving systems, which said passbooks, account books, advertising literature, and other paraphernalia will hereinafter be referred to as "systems." In the course and conduct of its said business, it now ships and for more than three years last past has shipped from its place of business in New York City aforesaid, such "systems" when sold by it, to the purchasers thereof located in the State of New York, and others located in various other States of the United States and in the District of Columbia. Such "systems" are sold by respondent for use by banks and trust companies and their depositors in the various States of the United States and in the District of Columbia. There is now and for more than three years last past has been a constant current of trade and commerce by respondent in such "systems" between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is now and for more than three years last past has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of "systems" for use by banks and trust companies and their depositors in the conduct of Christmas Clubs and other saving systems, between and among the various States of the United States and in the District of Columbia. The conduct of Christmas Clubs and other saving systems is a popular form of saving and their favor with the public is increasing and the use of such Christmas Clubs and other saving systems is a very important factor in the conduct of banks and trust companies. Respondent is now and for more than three years last past has been the largest single dealer in the United States in "systems" for use by banks and trust companies in the conduct of Christmas Clubs

and of other saving systems and now sells and for more than three years last past has sold "systems" to more banks and trust companies than has or does any of its aforesaid competitors.

PAR. 2. In the course and conduct of its aforesaid business between and among the various States of the United States and in the District of Columbia, respondent in selling and in offering for sale its "systems" has falsely represented and still falsely represents that it is the sole owner of and has exclusive right to the use of the phrase "Christmas Club," that said phrase is trademarked by respondent, and that no one without its consent or license has the right to use the aforesaid name, "Christmas Club." In truth and in fact respondent is not and has not been the sole owner of the phrase "Christmas Club"; nor has it ever had the exclusive right to the use of the said phrase "Christmas Club"; the said phrase "Christmas Club" is not trademarked by respondent; and the aforesaid phrase may be used by others without the consent, permission, or license of the respondent.

PAR. 3. In the course and conduct of its aforesaid business between and among the various States of the United States and in the District of Columbia, respondent in selling and in offering for sale its "systems" has falsely represented and still falsely represents that it is the manufacturer and printer of the "systems" which it sells, when in truth and in fact it is not the manufacturer thereof, but such "systems" are manufactured for the respondent by manufacturing and printing concerns in which the respondent has no financial or other interest.

PAR. 4. In the course and conduct of its aforesaid business between and among the various States of the United States and in the District of Columbia, respondent in selling and in offering for sale its "systems" has represented and still represents to its customers and prospective customers that it has been and is still spending on advertising and promoting the growth of Christmas Clubs throughout the country, amounts of money considerably in excess of the amounts it has expended and is still expending for the purpose aforesaid.

PAR. 5. The aforesaid representations made by the respondent as set out in paragraphs 2, 3, and 4 hereof, have had and still have the capacity and tendency to mislead and deceive, have misled and deceived, and do mislead and deceive purchasers and prospective purchasers into the beliefs that the aforesaid representations are and have been true, and have tended to and do tend to induce, and have induced and do induce banks and trust companies to purchase "systems" from respondent in such erroneous beliefs. Thereby trade has been diverted and is being diverted by respondent from its com-

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petitors and substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

PAR. 6. The above alleged acts and practices of respondent are all to the injury and prejudice of the public and respondent's competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Count II

The Federal Trade Commission having reason to believe that Christmas Club, a corporation, hereinafter called respondent, has violated and is now violating the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act), hereby issues this its complaint against respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 1 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 1 of said count 1 were set out in full herein, and said paragraph 1 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. In the course and conduct of its business described in paragraph 1 of count 1, respondent in the course of commerce between and among the various States of the United States and the District of Columbia described in said paragraph of said count, has made sales and is still making sales and contracts for the sale of "systems" on the condition, agreement, and understanding that the purchasers thereof shall not deal in the "systems" of a competitor or competitors of respondent, the effect of which said sales and contracts for sale upon such condition, agreement, and understanding may be, is and has been to substantially lessen competition or tend to create a monopoly in respondent in commerce between and among the various States of the United States and in the District of Columbia in "systems."

PAR. 3. The aforesaid acts of respondent constitute a violation of the provisions of Section 3 of the hereinabove mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes, approved October 15, 1914 (the Clayton Act).

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Count III

The Federal Trade Commission having reason to believe that Christmas Club, a corporation, hereinafter called respondent, since June 19, 1936, has violated and is now violating the provisions of Section 2 (a) of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes," approved June 19, 1936, (the Robinson-Patman Act), hereby issues this its complaint against Respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 1 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 1 of said count 1 were set out in full herein, and said paragraph 1 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. Since June 19, 1936, in the course and conduct of its business described in paragraph 1 of count 1 hereof, respondent while engaged in the commerce therein described, in the course of such commerce, directly and indirectly has discriminated and is still discriminating in price between different purchasers of "systems" of like grade and quality, the effect of which said discriminations may be to substantially lessen competition or tend to create a monopoly in the aforesaid commerce in "systems," or to injure, destroy, or prevent competition with respondent.

PAR. 3. The aforesaid acts of respondent constitute a violation of the provisions of Section 2 (a) of the above mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act).

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," and pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission on February 5, 1937, issued, and on February 8, 1937, served, its complaint in this proceeding upon respondent, Christmas Club, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and with violating Section 3 of the aforesaid act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and with violating Section 2 (a) of the said Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as amended by Section 1 of an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes." After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an amended answer, in which respondent stated that while not conceding that it has violated any law of the United States, nevertheless for the sole purpose of avoiding the trouble and expense incidental to further continuation of this proceeding, it desired to waive hearing on the charges set forth in said complaint and not to contest the proceeding, and solely for the purpose of disposing of this proceeding consented that the Commission might, without trial, without the taking of evidence and without any further procedure enter its findings as to the facts, including such inferences as the Commission might draw from the facts admitted in the said amended answer, and issue and serve upon it an order to cease and desist from the acts admitted in the said amended answer, and in which said amended answer respondent stated that all consents and admissions given or made by the respondent therein were given and made solely on the conditions and for the purposes aforesaid and insofar as they constituted admissions were not made

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as, nor were they to be taken as, admissions of fact for any other purpose or in any other proceeding whatsoever. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and said amended answer (briefs and oral arguments of counsel having been waived), 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 conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent 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 at 341 Madison Avenue, New York City, in said State.

PAR. 2. The respondent is now and for more than three years last past has been engaged, among other things, in the sale of passbooks, account books, advertising literature, and other paraphernalia for use by banks and trust companies in the conduct by them of Christmas Clubs and other savings systems (which said passbooks, account books, advertising literature, and other paraphernalia are hereinafter referred to as "systems").

PAR. 3. In the course and conduct of its business, the respondent now causes to be shipped and for more than three years last past has caused to be shipped such "systems," when sold by it from Harrisburg, Pa., to the purchasers thereof, some located in the State of Pennsylvania and others located in various other States of the United States and in the District of Columbia; and there is now and for more than three years last past has been a constant current of trade and commerce by the respondent in such "systems" between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, the respondent is now, and for more than three years last past has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of "systems" for use by banks and trust companies and their depositors in the conduct of Christmas Clubs and other savings systems in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In 1936 there were approximately 17,800 banks and trust companies throughout the United States, of which approximately 5,200 operated Christmas Clubs.

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PAR. 6. The respondent now furnishes, and for more than three years last past has furnished, "systems" to more banks and trust companies, for use by them in the conduct of Christmas Clubs and other savings systems, than has or does any one of its competitors.

PAR. 7. The annual revenues of the respondent from furnishing "systems" to banks and trust companies now exceeds, and for more than three years last past has exceeded, that of any of its competitors.

PAR. 8. While prior to 1934 the respondent represented to banks or trust companies that it had the sole and exclusive right to the use of the name or phrase "Christmas Club" and represented that such name or phrase had been trade-marked by it for use on "systems," during the past three years it has not made such representations except as to the name of a magazine.

PAR. 9. In 1910 Merkel Landis conceived the Christmas Club plan and in 1911 transferred to the Landis Savings Club Company all of his rights, title, and interest in the plan. Early in 1912 Mr. H. F. Rawll acquired from the Landis Savings Club Company the right to use the plan. Mr. Rawll immediately gave the plan the name "Christmas Club" and operated his business under the unincorporated name "Christmas Club" from March 1912, until June 1914, when he incorporated his business under the name "Christmas Club, A Corporation," the respondent herein. The respondent subsequently acquired all the assets of the Landis Savings Club Company. While prior to 1934 the respondent represented that it had the right to the exclusive use of the name or phrase "Christmas Club," it has not established such right in any judicial proceeding. From time to time, various persons, firms and corporations, other than the respondent, have been engaged in the business of supplying banks and trust companies with "systems" inscribed with the name "Christmas Club" for use in the operation of Christmas Clubs and from 1929 to 1932, inclusive, the respondent acquired the assets of a number thereof for a substantial consideration.

PAR. 10. Since March 1927, the respondent has been and now is the owner of the registered trade-mark "Christmas Club" for use as the title of a magazine in Class 38 (Reg. No. 225139), but the name or phrase "Christmas Club" has not been so registered by it as a trade-mark for "systems." The aforesaid representations made prior to 1934, that the respondent had the sole and exclusive right to the use of the name or phrase "Christmas Club" without having registered it or having established it in a court of competent jurisdiction, and that such name or phrase had been trade-marked by it for use on "systems" without having registered it or having established it in or by a court of competent jurisdiction for use on "systems" has had

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the capacity and tendency to mislead certain banks and trust companies purchasing such "systems" from the respondent into believing that such representations were true and to purchase "systems" from respondent in such erroneous beliefs.

PAR. 11. Certain forms of contracts entered into by the respondent prior to the issuance of the complaint herein contained the statement that "systems" would be shipped "f. o. b. its factories." However, approximately 95% of the "systems" furnished to banks and trust companies by the respondent are manufactured for its order by manufacturing and printing concerns in which the respondent has no financial or other interest and approximately 5% of such "systems" are printed by affiliated corporations, the stock of which is owned by a corporation which also owns a part of the stock of the respondent. All "systems" furnished by the respondent are manufactured and printed for it under its directions and instructions. Said statement contained in such forms of contracts that "systems" would be shipped by the respondent "f. o. b. its factories" has had the capacity and tendency to mislead certain banks and trust companies purchasing "systems" from the respondent into believing that the respondent itself manufactured and printed its own "systems" and to induce them to purchase "systems" from the respondent in such erroneous belief.

PAR. 12. At various times the respondent has represented, without explanation of the sense in which the term "promoting" is used, that it has spent over a period of time more than \$3,500,000 in promoting the Christmas Club name and idea among the banks and people of the United States, such figure representing an arbitrary fraction of the total selling expenses, other than cost of goods sold, and executive selling expenses, over a period of years, of the respondent and certain other companies the assets of which have been acquired by the respondent. Such representation without explanation of the sense in which the word "promotion" has been used has not informed banks and trust companies as to the sense in which respondent has used the word "promotion" and has induced them to purchase "systems" from respondent without knowing the sense in which the word "promotion" was used.

PAR. 13. By the representations hereinbefore described, trade has been diverted to respondent from its competitors and substantial injury has been done by respondent to substantial competition in interstate commerce.

PAR. 14. Prior to the issuance of the complaint herein, the respondent contracted to furnish "systems" to banks and trust companies under forms of contracts, many of which were for a term of seven

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years and provided that the bank or trust company should purchase "systems" from the respondent exclusively.

PAR. 15. Certain banks and trust companies having such contracts with the respondent have not, by reason thereof, purchased "systems" from competitors of the respondent, and the effect of such contracts has been and is to substantially lessen competition or tend to create a monopoly in the respondent.

PAR. 16. Since June 19, 1936, and prior to the issuance of the complaint herein, the respondent entered into and is carrying out contracts with banks and trust companies providing that the respondent would furnish "systems" of like grade and quality to each bank or trust company and would accept in payment therefor a percentage of the deposits made in the Christmas Club of the bank or trust company. All of such contracts did not provide for payments on the same percentage basis. However, under the terms of such contracts the bank or trust company was privileged to requisition unlimited quantities of "systems" from the respondent regardless of the rate of percentage paid by the bank or trust company or regardless of the total deposits in its Christmas Club.

PAR. 17. Under such contracts the respondent has, in the course of interstate commerce, discriminated and is still discriminating in price between different purchasers of "systems" of like grade and quality, the effect of which discriminations has been and is to substantially lessen competition or tend to create a monopoly in interstate commerce in "systems."

CONCLUSIONS

1. The aforesaid acts and practices of the respondent Christmas Club, a corporation, as described in paragraphs 8, 9, 10, 11, 12, and 13 of the foregoing findings, considered in connection with the facts set forth in paragraphs 1, 2, 3, 4, 5, 6, and 7 thereof, are to the prejudice of the public and of respondent's competitors, 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."

2. The aforesaid acts and practices of the respondent Christmas Club, a corporation, as described in paragraphs 14 and 15 of the foregoing findings, considered in connection with the facts set forth in paragraphs 1, 2, 3, 4, 5, 6, and 7 of the foregoing findings, constitute a violation of the provisions of Section 3 of an Act of Congress entitled "An Act to supplement existing laws against unlaw-

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ful restraints and monopolies, and for other purposes," approved October 15, 1914.

3. The aforesaid acts and practices of the respondent Christmas Club, a corporation, as described in paragraphs 16 and 17 of the foregoing findings, considered in connection with the facts set forth in paragraphs 1, 2, 3, 4, 5, 6, and 7 thereof, constitute a violation of the provisions of Section 2 (a) of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended by Section 1 of an Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., Title 15, Sec. 13), and for other purposes," approved June 19, 1936.

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission on the complaint filed herein on February 5, 1937, and the amended answer of the respondent filed herein on September 28, 1937, and the Commission having made its findings as to the facts and conclusions of law; (1) that the respondent has 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"; (2) that said respondent has violated the provisions of Section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; (3) that said respondent has violated the provisions of Section 2 (a) of the said Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as amended by Section 1 of an Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13), and for other purposes," approved June 19, 1936.

It is ordered, That respondent Christmas Club, a corporation, and its successors, officers, agents, servants, and employees, forthwith cease and desist in connection with the business of selling or offering for sale "systems" (as that term is defined in the aforesaid findings as to the facts) in interstate commerce and in the District of Columbia, from doing and performing any of the following acts and things:

1. Representing that it has the right to the sole and exclusive use of the name or phrase "Christmas Club" for "systems"; and repre-

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senting that the name or phrase "Christmas Club" has been trademarked by the respondent for use on "systems": *Provided, however,* That nothing contained in this order shall prohibit the respondent from exercising its lawful right to prevent other corporations, persons, firms or partnerships from unlawfully using the name or phrase "Christmas Club" or from unlawfully using as a trade-mark, the name or phrase "Christmas Club";

2. Representing through advertisements, circulars, correspondence, stationery, or in any manner whatsoever, that it is the manufacturer and printer of "systems," unless and until it actually owns and operates, or directly and absolutely controls, a printing establishment wherein are printed any and all "systems" by it sold or offered for sale;

3. Representing that it has spent over a period of time more than \$3,500,000, or any other sum, in promoting the Christmas Club name and idea among the banks and trust companies and the people of the United States, without accurately explaining the manner in which such sum has been computed;

4. Entering into contracts for the sale of "systems" or continuing to make sales of "systems" on the condition, agreement and understanding that the purchaser thereof shall not purchase or deal in the "systems" of a competitor or competitors of the respondent: *Provided, however,* That nothing contained in this order shall prohibit the respondent from entering into contracts whereby it agrees to furnish purchasers with such "systems" as they may requisition from the respondent if such purchasers are free to purchase "systems" from competitors of the respondent;

5. Unlawfully discriminating in price as found in paragraphs 16 and 17 of the aforesaid findings as to the facts, and conclusions.

Nothing contained in this order shall be construed to prevent the respondent from continuing to deal with banks or trust companies so long as such dealings shall not violate the provisions of this order.

It is hereby further ordered, That the said respondent shall within 90 days from the date of service upon it of this order, file with this Commission a report in writing, setting forth in detail the manner and form in which it shall have complied with this order.

Syllabus

IN THE MATTER OF

DAVIS PAINT COMPANY, INC., 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 2737. Complaint, Mar. 5, 1936—Decision, Oct. 1, 1937

Where two corporations engaged in sale to purchasing public of paint, varnish, enamel, and allied products made by third concern, owner of their capital stock, and likewise engaged, along with the president thereof and said concern's principal stockholder and founder, in sale to purchasing public, directly or indirectly, through wholesale and retail dealers and through agents—

- (a) Made use of words, in advertising and soliciting the sale of the products sold by them, "Direct from factory to you," or of words of like and similar import, notwithstanding fact they did not, themselves, as above set forth, manufacture products thus offered and sold by them; and

Where said manufacturing concern, in course and conduct of its business, and to induce customers and prospective customers to purchase its products—

- (b) Represented, through guarantees, that claims by customers for refunds or adjustments would be allowed, through such statements in its advertisements and advertising matter, and on the labels attached to the containers of its products, as "GUARANTEE * * * Double-Barreled Money-Back GUARANTEE," If, for any reason, Davis' Ever-Bright Guaranteed Paint does not come up to your expectations after applying a portion of it, you may return the remainder and we will refund all you have paid for your entire order," along with offer, after all the paint had been applied according to directions and had failed to give "the service you have a right to expect of any paint, regardless of price," to replace same free of charge, paying all shipping charges and for applications "ON YOUR BUILDINGS. Or, if you prefer, we will REFUND YOUR MONEY IN FULL," facts being such claims were not in fact thus allowed, through conceded exaction of questionnaire compliance, subjection of customers to considerable correspondence and, in some cases, refusal to accede to customers' claims;

- (c) Caused to appear on its price lists, circulated widely among its agents and dealers, customers and prospective customers, depiction of "Three Large Factory Buildings," together with statement that such "up-to-date modern paint and varnish factories" were located at Kansas City, Cleveland, and Berkeley, Calif., facts being said manufacturing concern never actually owned entire paint factory in said last-named city, though stock therein was assertedly owned by its founder, president, principal stockholder, and then vice-president; and

Where an agent of a corporation, then dormant and thereafter dissolved, but capital stock of which was owned by said manufacturing concern—

- (d) Represented, through letters mailed to customers and prospective customers, that paints of said various companies and individual could be purchased for prices substantially lower than the regular or current prices, and that said paints ordinarily sold for prices substantially higher than