

IN THE MATTER OF  
AMERICAN CRAYON 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 2967. Complaint, Nov. 4, 1936—Decision, Jan. 31, 1938*

Where some 14 corporations engaged in manufacture of chalk and wax crayons, water colors, tempera colors, and other items of school supplies, and in the sale and distribution thereof to the same trade and with the same customers or potential customers in the various States and in the District of Columbia, and representing practically the entire source of supply of such products in the United States, and, prior to the organization of their industry into an association in 1933 and subsequent activities of said association and its later successor institute, in competition with one another as to price—

- (a) Discussed and compared prices, terms, and discounts at which they were offering and selling their said products and prices at which they were suggesting resale thereof, at meetings held from time to time and at various places, and thereby came to an agreement and understanding to fix prices, terms, and discounts at which they would offer and sell their said products and, to a substantial extent, did thereafter so offer and sell same at prices substantially uniform as among themselves, and with substantially uniform resale price schedules therefor, and did thereafter, in pursuance of their said understanding, make substantially uniform changes in their said prices and resale price schedules; and
- (b) Reported to their said association and its successor institute information as to prices, suggested resale prices, and terms of sale and discounts subject to change without notice, at which they were selling their said various products; and

Where aforesaid association and its successor institute—

- (c) Cooperated with aforesaid corporations through holding meetings for them to enter into such agreements as aforesaid, and through acting as a clearing house for the exchange of information submitted by said corporations as to such prices, terms, and discounts fixed by such agreements, and duly disseminating such information to the members;

With result of causing them, and tending to cause them, to offer and sell their said competitive chalk and wax crayons, water colors, tempera colors, and other items of school supplies at prices substantially uniform among themselves, fixing and maintaining substantially uniform resale price schedules thereof, and substantially restricting price competition among and between them, and keeping prices at an artificial level:

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

*Mr. Reuben J. Martin* for the Commission.

*Wise, Whitney & Canfield*, of New York City, for respondents; along with *Wall, Haight, Carey & Hartpence*, of Jersey City, N. J., for Joseph Dixon Crucible Co.;

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*Johnson, Clapp, Ives & Knight*, of Boston, Mass., for Standard Crayon Manufacturing Co.;

*Amerling & Angell*, of New York City, for Globe Crayon Co.; and

*Wesselman & Kraus*, of New York City, for Art Crayon Co.

## COMPLAINT

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 having reason to believe that American Crayon Company; Binney & Smith Co.; Milton Bradley Co.; Talens School Products, Inc.; Joseph Dixon Crucible Company; Standard Crayon Manufacturing Co.; National Crayon Company; New Jersey Crayon Company; Pennart Crayon Co.; Creston Crayon Company; Weber Costello Co.; American Art Clay Co.; Globe Crayon Company, Art Crayon Company, hereinafter referred to as corporate respondents; and the Crayon, Water-Color and Craft Institute, hereinafter referred to as the respondent association, have been and now are 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said corporate respondent, American Crayon Company, is a corporation organized under the laws of the State of Ohio in 1890, with its principal office located in the city of Sandusky within the said State.

PAR. 2. Said corporate respondent, Binney & Smith Co., is a corporation organized under the laws of the State of New York in 1902, with its principal office located at 41 East Forty-second Street in the city of New York within said State.

PAR. 3. Said corporate respondent, Milton Bradley Co., is a corporation organized under the laws of the State of Massachusetts in 1884 with its principal office located in the city of Springfield within said State.

PAR. 4. Said corporate respondent, Talens School Products, Inc., is a corporation organized under the laws of the State of Delaware in 1931 with its principal office located at 36 West Twenty-fourth Street in the city of New York within the State of New York.

PAR. 5. Said corporate respondent, Joseph Dixon Crucible Company, is a corporation organized under the laws of the State of New Jersey in 1868, with its principal office located at Jersey City within the State of New Jersey.

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PAR. 6. Said corporate respondent, Standard Crayon Manufacturing Co., is a corporation organized under the laws of the State of Massachusetts in 1910 with its principal office located at Danvers within the State of Massachusetts.

PAR. 7. Said corporate respondent, National Crayon Company, is a corporation organized under the laws of the State of Pennsylvania in 1855 with its principal office located in the city of West Chester within the State of Pennsylvania.

PAR. 8. Said corporate respondent, New Jersey Crayon Company, is a corporation organized under the laws of the State of New Jersey in 1921 with its principal office located in the city of Paterson within the State of New Jersey.

PAR. 9. Said corporate respondent, Pennart Crayon Company, is a corporation organized under the laws of the State of Pennsylvania in 1913 with its principal office located in Easton within the State of Pennsylvania.

PAR. 10. Said corporate respondent, Creston Crayon Company, is a corporation organized under the laws of the State of New York in 1933 with its principal office in the city of New York within the State of New York.

PAR. 11. Said corporate respondent, Weber Costello Co., is a corporation organized under the laws of the State of Illinois with its principal office located in the city of Chicago Heights within the State of Illinois.

PAR. 12. Said corporate respondent, American Art Clay Company, is a corporation organized under the laws of the State of Indiana with its principal office located at 4717 West Sixteenth Street in the city of Indianapolis within the State of Indiana.

PAR. 13. Said corporate respondent, Globe Crayon Company, is a corporation organized under the laws of the State of New York in 1936 with its principal office located in the city of Brooklyn within the State of New York.

PAR. 14. Said corporate respondent, Art Crayon Company, is a corporation organized under the laws of the State of New York in 1921, with its principal office at 253 Thirty-sixth Street in the city of Brooklyn within the State of New York.

PAR. 15. All of said corporate respondents for a long time, to wit, more than 1 year last past, have been and now are engaged in the manufacture and distribution of chalk and wax crayons, water colors, tempera colors, and other items of school supplies, which the said respective corporate respondents sell to their respective customers located in the various States of the United States, causing said products, when sold, to be transported in interstate commerce from the State of their respective manufacture to the purchasers thereof located in

the various States of the United States. Except for the said practices engaged in by said corporate respondents as hereinafter set forth, said corporate respondents would be in free, open, and active competition with each other in the sale and distribution in interstate commerce of their respective products.

PAR. 16. Each of said corporate respondents, with the exception of Art Crayon Company, is now and has been since December 1934, a member of said respondent association, Crayon, Water-Color and Craft Institute, and has been represented at the meetings of said association.

Said corporate respondent, Art Crayon Company, was formerly a member of said respondent association, Crayon, Water-Color and Craft Institute, and during the time it was a member of said respondent association was represented at the meetings of said association. Said corporate respondent, since its resignation as a member of said respondent association, Crayon, Water-Color and Craft Institute, has continued to cooperate with said respondent association and with said other corporate respondents in their activities.

PAR. 17. Said corporate respondents, acting in cooperation with each other and through and in cooperation with said respondent association for more than 1 year last past, and particularly since December 1934, have entered into an understanding, agreement, combination, or conspiracy among themselves and with and through said respondent association to restrict, restrain, and suppress competition in the sale and distribution of chalk and wax crayons, water colors, tempera colors, and other items of school supplies to customers located throughout the several States of the United States, as aforesaid, by agreeing to fix and maintain uniform prices, terms, and discounts at which said chalk and wax crayons, water colors, tempera colors, and other items of school supplies are to be sold, and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through said respondent association as to the prices, terms, and discounts at which said corporate respondents have sold and are offering to sell said chalk and wax crayons, water colors, tempera colors, and other items of school supplies to said customers.

PAR. 18. Said corporate respondents, in furtherance of their aforesaid understanding, agreement, combination, or conspiracy, on December 15, 1934, organized a voluntary trade association known as the Paint and Crayon Industry. Subsequently, to wit, on May 14, 1936, said voluntary trade association was incorporated under the Non-Profit Corporation Statute of the State of New York and its name was changed to Crayon, Water-Color and Craft Institute. Said re-

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spondent association the, aforesaid Crayon, Water-Color and Craft Institute, is composed of manufacturers of chalk and wax crayons, water colors, tempera colors, and other items of school supplies, located throughout the several States of the United States, and has as its principal members said corporate respondents herein named, which said corporate respondents manufacture and sell a large majority of the total volume of chalk, wax crayons, water colors, tempera colors, and other items of school supplies used and sold in interstate commerce in the United States. Said respondent association, since its organization, has acted as a clearing house for the exchange of information submitted by said corporate respondents including reports as to the sales of chalk and wax crayons, water colors, tempera colors and other similar items of school supplies, together with prices, discounts and terms at which said chalk, wax crayons, water colors, tempera colors, and other similar items of school supplies are sold or offered to be sold. Headquarters of said respondent association, since its organization, have been and now are maintained at 386 Fourth Avenue in New York City within the State of New York, and regular meetings of the members of said respondent association have been and are held from time to time, at which meetings said corporate respondents discuss trade and competitive conditions in the chalk and wax crayons, water colors, tempera colors, and other similar items of school supplies industry, and agree upon and establish trade policies to be followed and prices to be charged by said corporate respondents in the sale and distribution of their said products and resale prices at which said products are to be sold, and perform the acts and things hereinbefore alleged in paragraph 17.

PAR. 19. The result of the acts and conduct of the said corporate respondents and of the said respondent association, as hereinbefore set out in paragraphs 17 and 18 has been and now is to unduly tend to substantially lessen, restrict, and suppress competition in the interstate sale of chalk and wax crayons, water colors, tempera colors, and other similar items of school supplies throughout the several States of the United States, particularly in the prices quoted and discounts allowed by said corporate respondents, and to enhance the prices of said chalk and wax crayons, water colors, tempera colors, and other similar items of school supplies, above the prices which had theretofore prevailed and which would prevail in normal natural and open competition between said corporate respondents, and also to tend to create a monopoly in the said corporate respondents in the manufacture and sale of chalk and wax crayons, water colors, tempera colors, and other similar items of school supplies in interstate commerce.

PAR. 20. The foregoing alleged acts and practices of the said corporate and association respondents have been and still are to the prejudice of the buying public generally and customers of said corporate respondents in particular, 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."

#### 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 November 4, 1936, issued and served its complaint in this proceeding upon the respondents, American Crayon Company, Binney & Smith Company, Milton Bradley Company, Talens School Products, Inc., Joseph Dixon Crucible Company, Standard Crayon Manufacturing Co., National Crayon Company, New Jersey Crayon Company, Pennart Crayon Co., Creston Crayon Company, Weber Costello Co., American Art Clay Co., Globe Crayon Company, Art Crayon Company, and Crayon, Water-Color & Craft Institute, 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 attorneys 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 the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceedings without presentation of argument or the filing of briefs; which said stipulation has been by the Commission approved. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answers 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 Ohio, New Jersey, Massachusetts, Delaware, New Jersey, Massachusetts, Pennsylvania, New Jersey, Pennsylvania, New York, Illinois, Indiana, New York, New York, and New York, respectively.

PAR. 2. All of the respondents are now and for a number of years past have been engaged in the manufacture, sale, and distribution of chalk and wax crayons, water colors, tempera colors, and other items of school supplies, except that the Standard Crayon Manufacturing Co. at the times herein material manufactured and sold only chalk and wax crayons, and the Weber Costello Co. and American Art Clay Co. manufactured and sold only chalk. Pursuant to such sales and as a part thereof, respondents have regularly made shipment of said products from their respective places of business through and into the District of Columbia and States of the United States other than the States of the point of origin of such shipments. The chalk and wax crayons, water colors, tempera colors, and other items of school supplies manufactured and sold by each respondent have been and are similar to and have the same or similar uses and purposes as the chalk and wax crayons, water colors, tempera colors, and other items of school supplies of all other respondents; they seek and have sought to sell the same to the same trade and all dealers in and users of chalk and wax crayons, water colors, tempera colors, and other items of school supplies in the various States and in the District of Columbia are and have been the customers of or the potential customers of each and all of the respondents. Respondents represent and have represented practically the entire source of supply of chalk and wax crayons, water colors, tempera colors, and other items of school supplies in the United States.

PAR. 3. Prior to the year 1933, these respondents had been offering for sale and selling competitive chalk and wax crayons, water colors, tempera colors, and other items of school supplies at prices determined by competition among them and these prices in many instances varied as among said respondents. In the year 1933, the respondents organized their industry under the name of the Paint & Crayon Industry Association. In the years 1934, 1935, and 1936, these respondents held meetings from time to time at various places, at which meetings they discussed and compared prices, terms, and discounts at which they were offering for sale and selling competitive chalk and wax crayons, water colors, tempera colors, and other items of school supplies and prices at which they were suggesting that said

chalk and wax crayons, water colors, tempera colors, and other items of school supplies were to be resold or offered for resale. At and by means of said meetings and discussions, respondents came to an agreement or understanding to fix the prices, terms, and discounts at which they would and thereafter to a substantial extent did offer for sale and sell competitive chalk and wax crayons, water colors, tempera colors, and other items of school supplies at prices substantially uniform as among the respondents, and fixed and maintained substantially uniform resale price schedules containing prices at which said chalk and wax crayons, water colors, tempera colors, and other items of school supplies were suggested to be resold. From time to time thereafter, pursuant to such understanding, respondents made substantially uniform changes in said prices and in said resale price schedules.

On or about May 1936, the respondents formed the Crayon, Water-Color & Craft Institute which is named as one of the respondents herein. Since the formation of the Association hereinbefore referred to and since the formation of the respondent Crayon, Water-Color & Craft Institute, the respondents have reported to said Association and to said Institute information as to the prices, suggested resale prices, terms of sale, and discounts subject to change without notice at which these respondents had sold and were selling said chalk and wax crayons, water colors, tempera colors, and other items of school supplies. All of said information has been duly disseminated by said Association and by said Institute to its members; and during all of this period of time, the said Association and the said Institute have acted as a clearing house for the exchange of information submitted by said corporate respondents.

The respondent, Joseph Dixon Crucible Company, resigned from the respondent Crayon, Water-Color & Craft Institute on June 19, 1936, and at all times material herein was engaged only in the sale of wax crayons manufactured by others and in certain other items of school supplies which it manufactured, to wit, compressed crayons.

Respondent, Art Crayon Company, resigned from the Paint & Crayon Industry Association on June 4, 1935, and has never been a member of respondent, Crayon, Water-Color and Craft Institute. Said respondent did not report in writing to the Paint & Crayon Industry Association subsequent to its resignation therefrom and has not so reported to the Crayon, Water-Color & Craft Institute. It has at times discussed with the Crayon, Water-Color & Craft Institute information as to prices, suggested resale prices and terms of sale and discounts at which it has sold and was selling said chalk and wax crayons, water colors, tempera colors, and other items of school supplies.

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PAR. 4. 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 chalk and wax crayons, water colors, tempera colors, and other items of school supplies at prices substantially uniform among said respondents, to fix and maintain substantially uniform resale price schedules of chalk and wax crayons, water colors, tempera colors, and other items of school supplies and to substantially restrict price competition among and between said respondents 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 said corporate respondents, American Crayon Company, Binney & Smith Company, Milton Bradley Company, Talens School Products, Inc., Joseph Dixon Crucible Company, Standard Crayon Manufacturing Co., National Crayon Company, New Jersey Crayon Company, Pennart Crayon Co., Creston Crayon Company, Weber Costello Co., American Art Clay Co., Globe Crayon Company, and Art Crayon Company, their subsidiaries, officers, agents, and employees, and each of them, do cease and desist from acting in cooperation with each other and through and in cooperation with said respondent Association, whereby they enter into agreements to fix and maintain uniform prices, terms and discounts at which chalk and wax crayons, water colors, tempera colors, and other items of school supplies are to be sold, or prices at which said

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chalk and wax crayons, water colors, tempera colors, and other items of school supplies are to be resold or offered for resale to customers located throughout the several States of the United States in interstate commerce; and from enforcing and maintaining by concert of action the aforesaid fixed prices, terms, and discounts by the exchange of information with each other directly or through said respondent Association as to the prices, terms, and discounts at which said corporate respondents are offering to sell said chalk and wax crayons, water colors, tempera colors, and other items of school supplies to customers located throughout the several States of the United States in interstate commerce; and from doing any acts or taking any other steps by concert of action to enforce and maintain said fixed prices, terms, and discounts to said customers located throughout the several States of the United States in interstate commerce.

*It is further ordered,* That said respondent association, Crayon, Water-Color & Craft Institute, its officers, agents, and employees do cease and desist from cooperating with said corporate respondents by holding meetings of the members of said respondent association at which said meetings said corporate respondents enter into agreements to fix prices, terms, and discounts at which said chalk and wax crayons, water colors, tempera colors, and other items of school supplies are sold or offered to be sold by said corporate respondents to their said customers located throughout the several States of the United States in interstate commerce; and from acting as a clearing house for the exchange of information submitted by said corporate respondents as to said prices, terms, and discounts fixed by agreement at which said chalk and wax crayons, water colors, tempera colors, and other items of school supplies are offered to be sold, or at which they are to be resold or offered for resale in interstate commerce as aforesaid in the enforcement and maintenance of said agreements; and from doing any acts or taking any action in the enforcement and maintenance of said agreements.

*It is further ordered,* That the respondents shall within 60 days after the 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF  
BANNER MANUFACTURING COMPANY

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

*Docket \$067. Complaint, Aug. 28, 1937<sup>1</sup>—Decision, Jan. 31, 1938*

Where a corporation engaged in distribution and sale of certain automobile accessories and other products to purchasers in other States and in District of Columbia, in substantial competition with those engaged in manufacture, distribution, and sale of similar products and others intended and designed for similar use, or in distribution and sale thereof, in commerce among the various States and in said District, and including those who do not in any way misrepresent the character and nature of their respective businesses and to purchasing public that their said products are generally safe from standpoint of corrosion for use as antifreeze products, and do not make use of other misleading representations as below set forth, or others similar thereto; in advertising certain of its antifreeze products in booklets, circulars, and show window displays distributed to purchasing public through service stations, hardware stores, accessory stores, and direct through the mails, and in other ways—

- (a) Represented that said preparations were safe and harmless solutions for general use in automobile radiators, through such statements as "THE SAFE ANTI-FREEZE," and through certifying, "FOR THE PROTECTION OF THE USER," and that product was made as below set forth "in strict conformity of standard," etc.; and
- (b) Represented, through use of word "Manufacturing" in its corporate name, and through statements, in their advertising and branding of their said antifreeze solutions, "FOR THE PROTECTION OF THE USER against inferior compounds we certify that the product on which our name appears is made in strict conformity of standard under the strict supervision of our laboratories. COMPOUNDED FOR AUTOMOBILE RADIATORS, BANNER MANUFACTURING COMPANY," that it was the manufacturer of said antifreeze preparations and that they were made in its laboratories under its strict supervision;

Facts being said antifreeze solutions would cause corrosion in cooling system in which continually used, would in many instances lessen effectiveness thereof and cause engine to overheat, and also corrosion on spark plugs, ignition wires, and other metal parts with which it came in contact, and would in many instances lessen effectiveness of ignition system through causing "shorts" therein, and said antifreeze preparations in aforesaid respects were not safe, it did not manufacture or supervise manufacture or makeup thereof, nor operate any laboratory for the purpose of manufacturing, compounding, and testing such products along scientific lines;

With result that public was led to believe that said antifreeze products were safe and harmless solutions for general use, not only from standpoint of protecting against freezing or damage due thereto, but from that of not causing corrosion in cooling system in which continually used, and other

<sup>1</sup> Amended.