

IN THE MATTER OF
THE WILLIAMS AND WILKINS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (A) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3844. Complaint, July 8, 1939—Decision, Aug. 23, 1939

Where a corporation engaged in publication, distribution, and sale of medical and other scientific books, in commerce among the various States and in the District of Columbia, in substantial competition with others engaged in publication, distribution and sale of such books in commerce as aforesaid, and in said District—

Discriminated in price between different purchasers of said books for resale to retailers or ultimate users, through giving, granting, and allowing price discounts from its established list of 20 percent, 25 percent, 30 percent and 35 percent, to various of such purchasers, for resale in same area and to same prospective customers and at same time, and thereby enabled some of said purchasers to buy its said books at price lower than competing purchasers were thus able to buy same books, to the injury of less favored buyers;

With the result that the effect of said discriminations in price, which did not, as appeared, come within any of the saving provisos of law involved, was substantially to lessen competition with favored purchasers and tend to create a monopoly in them, and to injure, destroy or prevent competition in sale and distribution of such books between favored purchaser recipients of such discriminatory prices and other less favored competing purchasers thereof who did not receive the same:

Held, That such discrimination in price by it constituted violation of Section 2 (a) of Clayton Act, as amended.

Mr. Frank Hier for the Commission.

COMPLAINT

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

PARAGRAPH 1. Respondent, The Williams and Wilkins Co., is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its office and place of business at Mount Royal and Guilford Avenues, Baltimore, Md., and has been

prior to June 19, 1936, and is now engaged in the publication, distribution, and sale of medical and other scientific books. Respondent sells and distributes said books in commerce between and among the various States of the United States and the District of Columbia, causing said books to be shipped and transported from their place of publication in Baltimore, Md., to purchasers of said books located in the various States of the United States and the District of Columbia, for use and resale within said States and the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is now, and during the time herein mentioned, has been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of publishing, distributing, and selling medical and scientific books in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as above described, respondent has, since June 19, 1936, discriminated in price, and is now discriminating in price between different purchasers buying the same books for resale to retail dealers or ultimate users by giving and allowing to some of its purchasers of said books lower prices than those given or allowed other of its said purchasers competitively engaged, one with the other, in the resale of said books either to the retail book dealer or to the ultimate user within the United States. Said discriminations consist for example, in granting and allowing price discounts of 20 percent to some, 25 percent to some, 30 percent to others, and 35 percent to still other purchasers of the same books for resale in the same area to the same prospective customers. The effect of such discriminatory discounts or prices is to enable some of said purchasers to buy said books at a lower price than competing purchasers to the injury of the less favored buyer.

PAR. 4. The general effect of said discriminations in price made by said respondent, as above set out, may be substantially to lessen competition with the favored purchasers; to tend to create a monopoly in the favored purchasers; to injure, destroy, or prevent competition in the sale and distribution of said medical books between the said favored purchasers of said books receiving such discriminatory prices and other less favored competing purchasers of the same books not receiving said discriminatory prices.

PAR. 5. The foregoing alleged acts of said respondent are in violation of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions 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 the Robinson-Patman Act, approved June 19, 1936 (title 15, sec. 13), the Federal Trade Commission on July 8, 1939, issued and served its complaint in this proceeding upon the party respondent named in the caption hereof, charging it with violating the provisions of paragraph (a) of section 2 of the said act, as amended. After the issuance and service of said complaint respondent filed its answer admitting all of the material allegations of fact set forth in said complaint to be true and waiving all intervening procedure and further hearing as to the said facts.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer filed thereto, 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 the following findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That the respondent, The Williams and Wilkins Co., is a corporation under the laws of the State of Maryland with its office and place of business at Mount Royal and Guilford Avenues, Baltimore, Md., and is engaged in the publication, distribution, and sale of medical and other scientific books which said respondent ships and sells in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. That respondent in the sale and distribution of the medical and scientific books which it publishes is in substantial competition with other corporations, individuals, partnerships, and firms engaged in the publication, distribution, and sale of medical and scientific books in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. That respondent since June 19, 1936, has discriminated in price and is now discriminating in price between different purchasers buying the same books from it for resale to either retail dealers or ultimate users by giving, granting, and allowing price discounts from its established list of 20 percent to some of said purchasers of its said books, 25 percent to others, 30 percent to others, and 35 percent to still other purchasers of the same books, for resale in the same area to the same prospective customers, and at the same time

and that the effect of such discriminatory discounts or prices is to enable some of said purchasers to buy said books at a lower price than competing purchasers are able to buy the same books, which results in an injury to the less favored buyers.

PAR. 4. That the effect of said discriminations in price made by said respondent is substantially to lessen competition with the favored purchasers; to tend to create a monopoly in the favored purchasers; to injure, destroy, or prevent competition in the sale and distribution of said medical and scientific books between the favored purchasers of said books receiving such discriminatory prices and other less favored competing purchasers of the same books not receiving said discriminatory prices.

PAR. 5. That the respondent, neither in its answer nor otherwise, contends that the discriminations charged in the complaint and admitted by it in said answer, come within any of the provisos or exceptions contained in said act of Congress as amended by the Robinson-Patman Act (title 15, sec. 13).

CONCLUSION

The Commission concludes, by reason of the facts and circumstances found and stated in the foregoing findings of fact, that the respondent, The Williams and Wilkins Co., has discriminated in price in violation of paragraph (a) of said section 2 of said Clayton Act as amended by the Robinson-Patman Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein by the respondent, The Williams and Wilkins Co., admitting all the material allegations of fact in the complaint to be true and waiving all intervening procedure and further hearing as to the said facts and the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that said respondent has violated the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and for other purposes," approved October 15, 1914, as amended by the Robinson-Patman Act approved June 19, 1936 (title 15, sec. 13);

It is ordered, That respondent, The Williams and Wilkins Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of medical and scientific books in interstate commerce for resale,

do forthwith cease and desist from discriminating in price directly or indirectly by varying discounts between competing purchasers for resale of said books as found in paragraph 3 of the aforesaid findings as to the facts and conclusion, or from directly or indirectly in any other manner discriminating in price between competing purchasers for resale of respondent's medical and scientific books by granting or allowing differing discounts thereon, the effect whereof may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which customers of the respondent are engaged or to injure, destroy, or prevent competition with any customer receiving the benefit of such discrimination, except where such discount makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such medical and scientific books are to such purchasers sold.

It is further ordered, That the said respondent, The Williams and Wilkins Co., shall, within 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.

Syllabus

IN THE MATTER OF

SAMUEL I. SIFERS, INDIVIDUALLY AND TRADING AS
SIFERS CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3311. Complaint, Jan. 25, 1938—Decision, Aug. 24, 1939*

Where an individual engaged in manufacture and sale of candy to wholesalers in various other States—

Furnished with certain types of candies made by him various push cards and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for distribution of said candies to members of consuming public wholly by lot or chance, and were used by said wholesalers' or retailers' customers for resale of said products to purchasing public, in accordance therewith, and which included (1) box of candy consisting of 40 pieces, together with 1 of said cards for use in sale and distribution of said candy, in accordance with said card's explanatory legend, pursuant to which customer paid 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents, depending upon number concealed by disk selected and received, as described by card, high quality, full value, 5-cent candy bar, (2) assortments, together with 150 disk cards for use in sale and distribution thereof in accordance with said cards' explanatory legends, pursuant to which those securing for their penny paid, certain 1 of 20 numbers received 5-cent candy bars, and those securing other numbers received penny pieces, and person making last purchase received 4 bars, and (3) 30 disk cards, in 2 sections, for use in sale and distribution of candy under a plan and in accordance with said card's explanatory legend, pursuant to which selectors of each of 6 of the disks received for the 5 cents paid two 5-cent candy bars, selectors of last disk in each of 2 sections into which card was divided received 1 large-size candy bar, and others received 1 bar of ordinary size; and Supplied thereby to and placed in the hands of others means by which games of chance, gift enterprises, and lotteries were conducted by retailer purchasers of said candy for resale to consuming public through use of said cards as above described, involving game of chance or sale of a chance in resale and distribution of his said candy, contrary to the established public policy of the United States Government, and in violation of the laws of several of the States, and in competition with those who are unwilling to employ in sale and distribution of candies any method or sales plan which involves games of chance, gift enterprises, or lottery schemes, and refrain therefrom;

With the result that such competitors were placed at a disadvantage in competing, many purchasers of candies manufactured and sold by him were attracted by element of chance involved in sale and distribution of said candies by use of said push cards furnished by him, and were thereby induced to purchase his candies in preference to similar products offered and sold by competitors who do not furnish with their candy similar push cards or other devices, and with result by reason of such preference that wholesale dealers and jobbers purchased substantial amounts of candies made