

IN THE MATTER OF
JOHNSON & JOHNSON, THE KENDALL COMPANY, AND
THE BAY COMPANY

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

Docket 3393. Complaint, Apr. 29, 1938—Decision, Dec. 21, 1939

Where three corporations which (1) were engaged at their respective places of business in manufacture of medical supplies, such as gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, and in sale thereof among the various States of the United States, the Territories thereof, and in the District of Columbia, to purchasers in other States, (2) made, in the aggregate, about 85 percent of all such products manufactured in the United States and sold therein, with balance divided among 12 others, output of no one of which equalled that of any of the aforesaid three, and (3) were and, but for acts below set forth, would be, in competition with one another as to price in sale of said various products between and among the various States of the United States, etc.—

Entered into and carried out an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they did fix and maintain, uniform prices to be exacted, and which they did exact, from purchasers of their said gauze, bandages, bandage rolls, and other products, as above set forth; and, in pursuance of said combination, agreement, etc.—

- (a) Concertedly fixed and maintained uniform prices for their said products, and communicated with one another proposed changes therein, in advance of trade notification thereof, and maintained for products aforesaid published list prices; and
- (b) Agreed to and did divide the United States into zones for which they fixed and maintained, concertedly, uniform prices exacted by them from purchasers of their said gauze bandages, bandage rolls, and other products, as above set forth;

With result that said acts and practices hindered and prevented price competition between and among said corporations in sale of said various products in commerce, and had a dangerous tendency so to do, and placed in such corporations power to control and enhance prices, and created in them a monopoly in sale of said various products and unreasonably restrained commerce therein:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair methods of competition.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Edward L. Smith for the Commission.

Hurd, Hamlin & Hubbell, of New York City, and *Mr. Kenneth Perry*, of New Brunswick, N. J., for Johnson & Johnson.

Ropes, Gray, Boyden & Perkins, of Boston, Mass., for The Kendall Co.

Miller, Canfield, Paddock & Stone and Mr. Horace W. Bigelow, of Detroit, Mich., for The Bay Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Johnson & Johnson, The Kendall Co., and The Bay Co., hereinafter referred to as respondents, have violated the provisions of 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. Respondent Johnson & Johnson is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in New Brunswick in said State; respondent The Kendall Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business in the city of Walpole in said State; respondent The Bay Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business in the city of Bridgeport in said State.

PAR. 2. The said respondents are now and since their being organized have been engaged in the manufacture at their respective places of business of medical supplies such as gauze bandage, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, and in the sale thereof between and among the various States of the United States, the territories thereof, and in the District of Columbia. In the course and conduct of their businesses, all of the said respondents for more than 5 years last past have caused and still cause such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, when sold directly and indirectly by them, to be transported in interstate commerce from their respective places of business to, into, and through various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers in such other States to whom such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, are and have been sold. Respondent The Kendall Co. now sells, and for more than 5 years last past has sold through two of its subsidiary corporations, Bauer & Black and Lewis Manufacturing Co., who in turn have sold

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directly and through agents, and sales are and have been made by the said respondents, Johnson & Johnson and The Bay Co., directly and through agents.

The amount of such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products manufactured and sold directly and indirectly by the respondents constitutes and at all times since 1933 has constituted approximately 85 percent of all of the gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products manufactured in the United States and sold therein, the balance of such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products manufactured in the United States being manufactured by 12 other manufacturers, none of which manufactures as much of such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products as does any of the respondents, Johnson & Johnson, The Kendall Co., and The Bay Co. The respondents were prior to September 1933, in competition as to price with one another in the sale of such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products between and among the various States of the United States, the territories thereof, and in the District of Columbia, and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since September 1933, and would now be in such price competition with one another.

PAR. 3. In September 1933, said respondents for the purpose of eliminating price competition among themselves, entered into, have since carried out, and are still carrying out, an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they have fixed and maintained uniform prices to be, and which have been and are still being, exacted by them from their purchasers of such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out the aforesaid combination, agreement, understanding, and conspiracy, the said respondents have, among other things, done the following:

(a) By agreement among themselves have fixed and maintained, and still fix and maintain, uniform prices for gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, sold by them and by each of them;

(b) Agreed to divide, and pursuant to such agreement have divided the United States into zones for which zones the respondents have by agreement fixed and maintained and still fix and maintain uniform prices exacted by them from their purchasers of gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products.

PAR. 4. The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have created in the respondents a monopoly in the sale of gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products in interstate commerce; have unreasonably restrained interstate commerce in gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 29, 1938, issued and served its complaint in this proceeding upon respondents, Johnson & Johnson, The Kendall Co. and The Bay Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After issuance of said complaint and the filing of respondents' answers, the Commission, by order entered herein, granted respondents motions for permission to withdraw said answers and to substitute therefor answers admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers, and the Commission, having duly considered the matter 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. Respondent Johnson & Johnson is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in New Brunswick in said State; respondent The Kendall Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business in the city of Walpole in said State; respondent The Bay Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business in the city of Bridgeport in said State.

PAR. 2. The said respondents are now and since their being organized have been engaged in the manufacture at their respective places of business of medical supplies such as gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, and in the sale thereof between and among the various States of the United States, the territories thereof, and in the District of Columbia. In the course and conduct of their businesses, all of the said respondents for more than 5 years last past have caused and still cause such gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, when sold directly and indirectly by them, to be transported in interstate commerce from their respective places of business to, into, and through various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers in such other States to whom such gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, are and have been sold. Respondent The Kendall Co. now sells, and for more than 5 years last past has sold through two of its subsidiary corporations, Bauer & Black and Lewis Manufacturing Co., who in turn have sold directly and through agents, and sales are and have been made by the said respondents, Johnson & Johnson and The Bay Co., directly and through agents.

The amount of such gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products manufactured and sold directly and indirectly by the respondents constitutes and at all times since 1933 has constituted approximately 85 percent of all of the gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products manufactured in the United States and sold therein, the balance of such gauze, bandages, bandage rolls,

cotton sponges, napkins, pads, adhesives, and similar products manufactured in the United States being manufactured by 12 other manufacturers, none of which manufactures as much of such gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products as does any of the respondents, Johnson & Johnson, The Kendall Co., and The Bay Co. The respondents were, prior to September 1933, in competition as to price with one another in the sale of such gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products between and among the various States of the United States, the territories thereof, and in the District of Columbia, and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since September 1933, and would now be, in such price competition with one another.

PAR. 3. In September 1933, said respondents for the purpose of eliminating price competition among themselves, entered into, have since carried out, and are still carrying out, an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they have fixed and maintained uniform prices to be, and which have been and are still being exacted by them from their purchasers of such gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out the aforesaid combination, agreement, understanding and conspiracy, the said respondents have, among other things, done the following:

(a) By agreement among themselves: (1) Have fixed and maintained, and still fix and maintain, uniform prices for gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products sold by them and each of them; (2) have communicated to one another proposed changes in the prices of the aforesaid products prior to the release to the trade of notice of such proposed changes in prices; (3) have maintained published list prices for the aforesaid products.

(b) Agreed to divide, and pursuant to such agreement have divided, the United States into zones for which zones the respondents have by agreement fixed and maintained and still fix and maintain uniform prices exacted by them from their purchasers of gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products.

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CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have created in the respondents a monopoly in the sale of gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products in such commerce; have unreasonably restrained such commerce in gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Johnson & Johnson, The Kendall Co., and The Bay Co., their respective officers, agents, servants, and employees, in connection with the sale and the offering for sale of gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products in commerce between and among the various States of the United States and in the District of Columbia, forthwith cease and desist from:

1. Entering into and carrying out any conspiracy, combination, or undertaking to fix and maintain uniform prices in the sale of gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products to any and all classes and kinds of buyers.
2. Agreeing to communicate or communicating to any another changes and proposed changes in prices prior to the release to the trade in the regular course of business of notice of such price changes.
3. Agreeing to maintain and maintaining pursuant to any such agreement, published list prices.

4. Agreeing to divide, and dividing pursuant to such agreement, the United States into zones and with respect to such zones, fixing and maintaining uniform prices for gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products.

It is hereby further ordered, That the respondents, and each of them, shall, within 60 days from the day of the date of the service upon them of this order, file with this Commission reports in writing setting forth in detail the manner and form in which they shall have complied with this order.

IN THE MATTER OF
THE ASSOCIATION OF AMERICAN ARTS, 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 3409. Complaint, May 7, 1938—Decision, Dec. 22, 1939

Where a corporation and two individuals who, together with a third, were the incorporators thereof and directed and controlled its activities, policies, and affairs, engaged in offer and sale of tinted or colored enlargements of family and other photographs and of frames therefor; and two other persons engaged as agents and sales representatives for said two individuals and corporation in the offer and sale of their aforesaid products and in serving, in the case of one of said persons, as assistant manager for said individuals and said corporation;

In carrying on their said business through visiting, directly and through agents and representatives employed by them, homes of prospective customers in cities, towns, and rural communities of the various States, and through sales talks containing approved methods of approach and convincing arguments for use in contacting such prospective purchasers, prepared and furnished by them for distribution among and use by their salesmen, along with sample cases containing attractive specimens of genuine pastel paintings, oil color and water color paintings, identification card or credentials, contract forms and blanks, receipts and similar documents, and certificates or coupons for use in connection with so-called "draw," as below set forth, and under general procedure by which (1) one of their agents or representatives obtained photograph to serve as model for alleged Venetian convex portrait paintings, pastel and other types of so-called "paintings," (2) second and different salesman, in due course, submitted outline or proof of enlarged photograph and then endeavored to collect full price agreed upon for uncompleted alleged "pastel" or "painting," and to induce customer to agree to buy frame therefor, and (3) third and final representative delivered alleged "pastel" or "painting" and collected any sum remaining due and for frame, if customer had agreed to buy one, and under which purchasers were given to understand that they were contracting or dealing with duly constituted agents or representatives of said corporation, individuals, and persons, or of one of their trade name companies; and, as aforesaid engaged, in direct and substantial competition with others likewise engaged in sale of tinted or colored photographs, enlargements, and frames therefor, in commerce among the various States, and with others engaged in similar sale of genuine original pastels and paintings, including oil and water colors—

- (a) Represented, directly and through their said agents and sales representatives, that the finished pictures would be hand painted oil portraits on canvas and that paintings were done on Japanese silk, and made use of such terms as "pastel," "painting," "oil portraits," and "pastel portrait painting" to designate and refer to said photographs or enlargements thereof, or pictures produced on photographic base or impression, facts being so-called "pastels" or "paintings" were not such in any sense of word but,