

IN THE MATTER OF
THE AMERICAN CRAYON COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSECTIONS (a) AND (d) OF SECTION 2 OF AN ACT OF CONGRESS AP-
PROVED OCT. 15, 1914, AS AMENDED BY SECTION 1 OF AN ACT OF CONGRESS
APPROVED JUNE 19, 1936

Docket 4142. Complaint, May 24, 1940—Decision, Dec. 31, 1940

Where a corporation engaged in manufacturing crayons, chalk, paint sets, educational supplies, and allied products, and in offering for sale, selling, and distributing said products to purchasers in various States, in substantial competition with other concerns similarly engaged—

In selling its products of like grade and quality to all customers at one list price, from which those who purchased solely in case lots were allowed 50 percent trade discount—

- (a) Granted and allowed to certain "multiple discount customers" who were those "receiving discounts over and beyond the regular quantity or schedule discounts from one or more manufacturers in a similar field" and who were in active competition with other customers receiving only the aforesaid regular trade discount of 50 percent, additional discounts including (1) discounts ranging from 5 percent to 10 percent over and above aforesaid regular trade discount; and (2) varying discounts ranging from 15 percent to 10 percent plus 10 percent on certain sizes of "Prang" tempera only, over and above said regular trade discount;

With result that effect of such discriminations in price might be substantially to lessen competition in the lines of commerce concerned, to injure competition with it in the sale of its products, and substantially to injure competition in the resale of such products with its favored customers who were granted and allowed aforesaid discounts over and above the regular 50 percent trade discount:

Held, That under the facts and circumstances above set forth, said corporation discriminated in price in the sale of its products between different purchasers in violation of subsection (a) of section 2 of the Clayton Act as amended; and

Where said corporation, engaged as aforesaid—

- (b) Granted to certain "special or promotional distributors," over and above aforesaid regular trade discount of 50 percent and as compensation for carrying warehouse stocks and furnishing promotional and selling services and facilities, (1) in some cases additional percentage discounts of 10 percent; and (2) in another group of cases, additional discounts of 5 percent, without making such compensation available on proportionally equal terms to their competitors, whose requests to be allowed such compensation for furnishing the same services and facilities as those supplied by aforesaid favored customers it refused:

Held, That said corporation granted and allowed compensation to certain of its customers for services and facilities without making such payments available to all other competing customers on proportionally equal terms in violation of subsection (d) of Section 2 of the Clayton Act as amended.

Mr. John T. Haslett for the Commission.

Flynn, Frohman, Buckingham, Py & Kruse, of Sandusky, Ohio, for respondent.

COMPLAINT

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

I

Charging violation of subsection (a) of section 2 of the Clayton Act as amended, the Commission alleges:

PARAGRAPH 1. Respondent, The American Crayon Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at Sandusky, Ohio. Said respondent operates and maintains a plant at Sandusky, Ohio, and a warehouse at Jersey City, N. J.

PAR. 2. Respondent corporation is now and has been, since June 19, 1936, engaged in the business of manufacturing, offering for sale, selling, and distributing crayons, chalk, paint sets, educational supplies, and allied products. Respondent sells and distributes said products in commerce between and among the various States of the United States and in the District of Columbia, and, as a result of such sales, causes said products to be shipped and transported from its places of business to the purchasers thereof who are located in the various States of the United States other than the States in which respondent's places of business are located. There is, and has been at all times mentioned, a continuous course of trade and commerce in the said products across State lines between respondent's factory and warehouse and the purchasers of said products. Said products are sold and distributed for use and resale within the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and during all the time herein mentioned has been, in substantial competition with other corporations and with individuals, partnerships and firms engaged in the business of selling and distributing crayons, chalk, paint sets, educational supplies, and allied products in commerce.

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PAR. 4. In the course and conduct of its business as aforesaid, respondent, since June 19, 1936, has been and is now discriminating in price between different purchasers by selling its products to some of its customers at lower prices than it sells products of like grade and quality to other of its customers competitively engaged one with the other in the resale of said products within the United States. Respondent offers and sells its said products at one list price from which customers who purchase in case lots either for use or for resale are allowed by the respondent a 50 percent trade discount. To purchasers among this class of customers, whom the respondent designates as "Multiple Discount Customers," the respondent grants and allows additional discounts. To some of such "Multiple Discount Customers," respondent grants and allows discounts over and above the regular trade discount of 50 percent off the list price, ranging from 5 to 15 percent. To others of such "Multiple Discount Customers" the respondent grants and allows a discount of 10 plus 10 percent over and above the regular trade discount of 50 percent off the list price.

The "Multiple Discount Customers" of respondent who are granted and allowed the discounts over and above the regular trade discount of 50 percent off the list price, as aforesaid, are in active competition with other customers of respondent who purchase respondent's products in case lots and who do not receive any discounts over and above the regular trade discount of 50 percent off the list price.

PAR. 5. The effect of the discriminations in price set forth in paragraph 4 hereof has been and may be substantially to lessen competition in the lines of commerce in which respondent and its said customers are engaged and to injure, destroy, and prevent competition with the respondent in the sale and distribution of crayons, chalk, paint sets, educational supplies, and allied products, and has been and may be substantially to injure, destroy and prevent competition in the resale of such products with the favored customers of respondent who are granted and allow the discounts as aforesaid, over and above the regular trade discount of 50 percent off the list price.

PAR. 6. The foregoing acts and practices of said respondent are in violation of subsection (a) of section 2 of the Clayton Act as amended.

II

Charging violation of subsection (d) of section 2 of the Clayton Act as amended, the Commission charges:

PARAGRAPH 1. Paragraphs 1 to 3, inclusive, of count I hereof, are hereby repeated and made a part of this charge as fully and with the same effect as though herein again set forth at length.

PAR. 2. In the course and conduct of its business as aforesaid, respondent, since June 19, 1936, has been and is granting compensation in the form of percentage discounts or allowances to some of its customers who are selected by the respondent and who are designated as "Special or Promotional Distributors." Such percentage discounts or allowances have been and are granted to favored customers in consideration for merchandising and selling services furnished in connection with the sale of respondent's products. The percentage discounts are deducted from the invoice price and are over and above the regular trade discount of 50 percent off the list price. The respondent grants and allows such percentage discounts to its favored customers without making such discounts or allowances available on proportionally equal terms to other customers competing with such favored customers in the sale and distribution of respondent's said products.

Such other customers are able and willing to furnish the same services and facilities to the respondent as those furnished by its customers designated by the respondent as "Special or Promotional Distributors." To these customers who are able and willing to furnish the same services or facilities for the respondent as those furnished by customers designated as "Special or Promotional Distributors," the respondent has not made available the percentage discounts or allowances which are granted by the respondent to its "Special or Promotional Distributors." Respondent's customers who are able and willing to furnish the same services and facilities as furnished by respondent's "Special or Promotional Distributors" have requested the respondent to allow such compensation to them and, although often requested so to do by such customers, the respondent has refused and continues to refuse to grant or allow such compensation to them.

PAR. 3. The foregoing acts and practices of said respondent are violations of subsection (d) of section 2 of the Clayton Act as amended.

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 (the Clayton Act), as amended by section 1 of an act entitled "An Act to amend section 2 of an 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); the Federal Trade Commission on May 24, 1940, issued and

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served its complaint in this proceeding upon the party respondent named in the caption hereof, charging respondent with violating the provisions of subsections (a) and (d) of section 2 of said act as amended.

After the issuance of said complaint a stipulation was entered into between W. T. Kelley, chief counsel for the Commission, and the respondent containing a statement of certain facts taken as the facts for the purpose of this proceeding and authorizing the Commission to proceed upon such statements and to make its report stating its findings as to the facts and its conclusions based thereon and enter its order disposing of the proceeding without the presentation of argument and the filing of briefs.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the stipulation of facts, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that subsections (a) and (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act have been violated by the respondent, now makes this its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The American Crayon Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at Sandusky, Ohio. Respondent operates and maintains a plant at Sandusky, Ohio, and a warehouse at Jersey City, N. J.

PAR. 2. Respondent corporation is now, and has been since June 19, 1936, engaged in the business of manufacturing, offering for sale, selling, and distributing crayons, chalk, paint sets, educational supplies and allied products. Respondent sells and distributes said products in commerce between and among the various States of the United States and in the District of Columbia, and as a result of such sales causes said products to be shipped and transported from its places of business to the purchasers thereof who are located in various States of the United States other than the states in which respondent's places of business are located. There is and has been at all times mentioned herein a continuous course of trade and commerce in said products across State lines between respondent's factory and warehouse and the purchasers of said products. Said products are sold and transported for use and resale within the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and during all the times herein mentioned has been, in substantial competition with other corporations and with individuals, partnerships and firms engaged in the business of manufacturing, selling, and distributing crayons, chalk, paint sets, educational supplies, and allied products in commerce.

PAR. 4. Respondent has sold and is selling its products of like grade and quality to all customers at one list price from which customers who purchase solely in case lots are allowed by the respondent a 50 percent trade discount. Among the customers of the respondent who purchase solely in case lots and who are allowed the 50 percent trade discount is a group which may be designated as "multiple discount customers" who are customers "receiving discounts over and beyond regular quantity or scheduled discounts from one or more manufacturers in a similar field." To some such "multiple discount customers" the respondent has granted and allowed and does grant and allow discounts over and above the regular trade discount of 50 percent off the list price ranging from 5 percent to 10 percent.

To some other of such "multiple discount customers" the respondent has granted and allowed, and does grant and allow, varying discounts ranging from 15 per cent to 10 percent plus 10 percent on certain sizes of "Prang" tempera only, over and above the regular trade discount of 50 percent off the list price.

All customers of the respondent designated as "multiple discount customers" receive varying discounts which are deducted from the invoice price and follow the regular trade discount generally allowed to all customers by the respondent who purchase in case lots.

The "multiple discount customers" of respondent who are granted and allowed the additional discounts above referred to are in active competition with other customers of the respondent who purchase products of like grade and quality solely in case lots and who do not receive any discounts other than the regular trade discount of 50 percent off the list price generally allowed to all customers of the respondent purchasing in case lots.

PAR. 5. The effect of the discriminations in price as hereinabove set forth may be substantially to lessen competition in the lines of commerce in which respondent and its said competitors are engaged and to injure competition with the respondent in the sale and distribution of crayons, chalk, paint sets, educational supplies, and allied products and may be substantially to injure competition in the resale of such products with the favored customers of respondent who are granted and allowed the discounts as aforesaid over and above the regular trade discount of 50 percent off the list price.

PAR. 6. In the course and conduct of its business as aforesaid, respondent since June 19, 1936, has been and is granting compensation in the form of percentage discounts or allowances to some of its customers who are designated by the respondent as "special or promotional distributors" and who are customers "rendering varied services and facilities over and beyond that rendered by a regular jobber or distributor of merchandise." Such percentage discounts or allowances have been and are granted to these customers as compensation in consideration of merchandising, promotional and other selling services furnished in connection with the sale of respondent's products. The percentage discounts are deducted from the invoice price and are over and above the regular trade discount of 50 percent off the list price generally allowed by the respondent to all customers who purchase solely in case lots. The respondent in some instances grants and allows such compensation to its "special or promotional distributors" without making such compensation available on proportionally equal terms to other customers who are in competition with such "special or promotional distributors" in the sale and distribution of respondent's products of like grade and quality.

To some customers classified as "special or promotional distributors" the respondent grants and allows a 10 percent discount as compensation for carrying warehouse stocks and furnishing promotional and selling services and facilities.

To another group of customers in the classification of "special or promotional distributors" the respondent grants and allows a 5 percent discount as compensation for carrying warehouse stocks and furnishing promotional and selling services and facilities less extensive than those furnished by the group receiving the 10 percent compensation.

Among the customers of the respondent are some who are able and willing to furnish the same services and facilities to the respondent as those furnished by its customers designated as "special or promotional distributors." To these customers the respondent has not made available the percentage discounts or allowances which are granted by the respondent as compensation to its "special or promotional distributors." Among these customers who are able and willing to furnish the same services and facilities as furnished by the respondent's "special or promotional distributors" are some who have requested the respondent to allow such compensation to them and although so requested by such customers the respondent has refused, and continues to refuse, to grant or allow such compensation on proportionally equal terms.

CONCLUSIONS

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the respondent, The American Crayon Co., has discriminated in price in the sale of its products between different purchasers in violation of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

The Commission further concludes that the respondent, The American Crayon Co., has granted and allowed compensation to certain of its customers for services and facilities without making such payments available to all other competing customers on proportionally equal terms in violation of subsection (d) of section 2 of the 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 stipulation as to the facts entered into between respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without the presentation of argument or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusions based thereon, and an order disposing of the proceedings, and the Commission having made its findings as to the facts and conclusions that said respondent has violated the provisions of subsection (a) and subsection (d) of section 2 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 Clayton Act as amended by the Robinson-Patman Act.

It is ordered, That respondent, The American Crayon Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of crayons, chalk, paint sets, educational supplies, and allied products in interstate commerce for use or resale, do forthwith cease and desist:

1. From selling such commodities of like grade and quality to competing purchasers at uniform prices and granting varying discounts therefrom in the manner and under the circumstances found in paragraph 4 of the aforesaid findings as to the facts and conclusions.

2. From continuing or resuming the discriminations in price referred to and described in paragraph 4 of the Commission's findings as to the facts herein.

3. From otherwise discriminating in price between purchasers of crayons, chalk, paint sets, educational supplies, and allied products of like grade and quality, in a manner and degree substantially similar to the manner and degree of the discriminations referred to in paragraph 4 of the Commission's findings as to the facts herein, and in any other manner resulting in price discriminations substantially equal in amount to such discriminations, except as permitted by section 2 of the Clayton Act as amended.

4. From granting or allowing compensation to any customer of the respondent of an amount equal to 10 percent of the respondent's net billing prices of the products sold by such customer, for services or facilities furnished by or through such customer in connection with the handling, sale, or offering for sale of respondent's products, unless such payments are made available on proportionally equal terms to all buyers from the respondent who are competitors of such customers.

5. From granting or allowing compensation of an amount equal to 5 percent of the respondent's net billing prices of products sold by such customer, for services or facilities furnished by or through such customer in connection with the handling, sale, or offering for sale of respondent's products, unless such payments are made available on proportionally equal terms to all buyers from the respondent who are competitors of such customer.

It is further ordered, That the respondent, The American Crayon Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the sale and distribution of crayons, chalk, paint sets, educational supplies, and allied products, do forthwith cease and desist from granting or allowing to any customer of the respondent any compensation for services or facilities furnished by or through such customer in connection with the handling, sale or offering for sale of respondent's products, unless such payments are made available on proportionally equal terms to all buyers from the respondent who are competitors of such customer.

It is further ordered, That respondent 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
BINNEY AND SMITH COMPANY

COMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTIONS (a) AND (d) OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY SECTION 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4143. Complaint, May 24, 1940—Decision, Dec. 31, 1940

Where a corporation engaged in manufacturing crayons, chalk, paint sets, educational supplies, and allied products, and in offering for sale, selling, and distributing said products to purchasers in various States, in substantial competition with other concerns similarly engaged—

In selling its products of like grade and quality to all customers at one list price from which those who purchased solely in case lots were allowed a 50 percent trade discount—

- (a) Granted and allowed to a certain group of "competitive distributors" who were in active competition with its other customers receiving only aforesaid regular trade discount of 50 percent additional discounts including, (1) prior to complaint, discounts of 5 percent over and above the regular trade discount; and (2) discounts of 10 percent above the regular trade discount, thereafter, accorded to all such "competitive distributors" following the regular trade discount allowed to all customers purchasing in case lots;

With result that the effect of said discriminations in price might be substantially to lessen competition and to injure, destroy and prevent competition between it and its competitors in the products in question; and also substantially to lessen competition and to injure, destroy and prevent it in the use and resale of such products between some of its customers receiving the lower prices and some of the customers competitively engaged therewith who did not receive such lowered prices; and to tend to create a monopoly in it in said line of commerce;

Held, That under the facts and circumstances above set forth said corporation discriminated in price in the sale of its products between different purchasers in violation of subsection (a) of section 2 of the Clayton Act as amended; and

Where said corporation, engaged as aforesaid—

- (b) Granted to certain "special or promotional representatives," over and above aforesaid regular trade discount of 50 percent, as compensation for carrying warehouse stocks and furnishing selling services and facilities (1) in some cases, additional percentage discounts of 10 percent; and (2) in another group of cases, additional discounts of 5 percent, without making such compensation available on proportionally equal terms to their competitors, whose request to be allowed such compensation for furnishing the same services and facilities as those supplied by aforesaid favored customers it refused;

Held, That said corporation granted and allowed compensation to certain of its customers for services and facilities without making such payments available to all other competing customers on proportionally equal terms in violation of subsection (d) of section 2 of the Clayton Act as amended.