

IN THE MATTER OF
VONNEGUT HARDWARE COMPANY

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

Docket 4344. Complaint, Oct. 10, 1940—Decision, Jan. 23, 1941

Where a corporation engaged in manufacture of its self-releasing fire exit, or panic devices, as known to trade, and in sale and distribution thereof to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of fire exit latches and devices between and among the various States and in said District—

Discriminated in price between different purchasers buying its said panic devices of like grade and quality, through granting to some purchasers 40 percent discount from list, while contemporaneously granting to other purchasers, competitively engaged with group receiving said discount of 40 percent, 50 percent discount from uniform list price aforesaid;

With result that effect of said discriminations in price, through such differential in prices charged to competing purchasers, for which no justification was affirmatively shown or claimed, had been and might be substantially to injure, destroy, or prevent competition with it, and also with those purchasers who received benefits of said discriminatory prices:

Held, That said corporation, under facts and circumstances set forth, discriminated in price between purchasers of its said fire exit devices, in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. John G. Rauch, of Indianapolis, Ind., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Vonnegut Hardware Co., a corporation, is violating, and since June 19, 1936, has violated the provisions of section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows.

PARAGRAPH 1. Vonnegut Hardware Co., respondent herein, is a corporation organized and existing under the laws of the State of Indiana, with its principal office located at 120 East Washington Street, Indianapolis, Ind. Respondent operates a number of retail hardware stores in Indianapolis, Ind., and also is engaged in the manufacture of

self-releasing fire exit devices and in the distribution and sale thereof. The manufacturing part of respondent's business is conducted under the name "Von Duprin."

PAR. 2. Said respondent causes the Von Duprin devices to be transported for distribution and sale from its manufacturing plant located in Indianapolis, Ind., into and through the various States of the United States to the purchasers thereof located in other States of the United States and in the District of Columbia, and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said Von Duprin devices sold and distributed by respondent between the State of Indiana and various other 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, and during the time herein mentioned has been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of selling and distributing fire exit latches and devices between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, as aforesaid, since June 19, 1936, respondent has been, and is now, discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of such purchasers at lower prices than it sells its products of like grade and quality to other of such purchasers who are competitively engaged one with the other in the sale of said products within the United States.

The said discriminations in price are brought about by the respondent granting a 40 percent discount to some of such customers and a 50 percent discount to other of such customers from uniform list prices of such devices.

PAR. 5. The effect of the discriminations in price herein mentioned has been and may be substantially to injure, destroy, or prevent competition with respondent and also with those purchasers receiving the benefit of said discriminatory prices.

PAR. 6. The foregoing acts and practices of said respondent are violations of section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act (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 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936

Findings

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(U. S. C., title 15, sec. 13), the Federal Trade Commission on October 12, 1940, issued and served its complaint in this proceeding upon the party respondent named in the caption hereof charging said respondent with violating the provisions of subsection (a) of section 2 of said act, as amended.

After the issuance of said complaint, the respondent filed its answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure as to said facts, and expressly waiving the filing of briefs and oral argument.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and answer, and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Vonnegut Hardware Co., is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business located at 120 East Washington Street, Indianapolis, Ind. The respondent is engaged in the manufacture, sale, and distribution of self-releasing fire exit devices, known to the trade as Von Duprin Panic Devices.

PAR. 2. The respondent is now, and has been since June 19, 1936, engaged in the business of selling and distributing its Von Duprin Panic Devices from its plant located in Indianapolis, Ind., into and through the various States of the United States to purchasers thereof located in other States of the United States and in the District of Columbia. There is, and has been at all times herein mentioned, a continuous current of trade and commerce in said Von Duprin Panic Devices.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and has since June 19, 1936, been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of selling and distributing fire exit latches and devices between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid, the respondent, since June 19, 1936, has been and is now discriminating in price between different purchasers buying its Von Duprin Panic Devices of like grade and quality by selling such Von Duprin Panic Devices to some purchasers at lower prices than it sells products of like grade and quality to other purchasers. The discrimination in

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price is accomplished by the respondent's granting varying discounts from its uniform price list. To some purchasers the respondent has granted and allowed a 40 percent discount from the uniform list price while at the same time to other purchasers competitively engaged with the group receiving the 40 percent discount, the respondent has granted a 50 percent discount from said uniform list price.

No justification has been affirmatively shown or is claimed by the respondent for the differential in prices charged competing purchasers.

PAR. 5. The effect of the discriminations in price herein mentioned has been, and may be, substantially to injure, destroy, or prevent competition with respondent and also with those purchasers who receive the benefits of said discriminatory prices.

CONCLUSION

Under the facts and circumstances as set forth in the foregoing findings as to the facts, the Commission concludes that the respondent, Vonnegut Hardware Company, a corporation, has, in the sale of its Von Duprin fire exit devices, discriminated in price between purchasers in violation of subsection (a) 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 answer duly filed by respondent, which answer admits all of the material allegations of the complaint to be true, and waives the taking of further evidence and all other intervening procedure as to said facts, and expressly waives the filing of briefs and oral argument, and the Commission having made its findings as to the facts and conclusion herein, and the Commission having concluded that said respondent has violated the provisions of "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 (U. S. C., title 15, sec. 13).

It is ordered, That the respondent, Vonnegut Hardware Co., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of Von Duprin Panic Devices of like grade and quality in interstate commerce, do forthwith cease and desist:

1. From selling Von Duprin Panic Devices for use or resale within the United States and the District of Columbia to some purchasers at

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discounts of 40 percent from a uniform list price while selling to other purchasers at discounts of 50 percent from such uniform list prices.

2. From continuing or resuming such discrimination in price and from otherwise discriminating in price, in manner and degree substantially similar to such discrimination as found by the Commission in paragraph 4 of the findings as to the facts.

It is further ordered, That the said respondent, Vonnegut Hardware Co., within 60 days after service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying, and has complied, with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

**ALEXANDER WEILER AND LILLY GREENSPAN WEILER,
DOING BUSINESS AS NEW YORK PREMIUM NOVELTY
COMPANY**

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

Docket 3579. Complaint, Sept. 10, 1938—Decision, Jan. 24, 1941

Where two individuals engaged in sale and distribution of jewelry, cosmetics, cigarette lighters, electric lamps, razor blades, clocks, and various other articles of merchandise, to purchasers in the various States; in conducting their business as above set forth—

Made use of sales plan or method involving game of chance, gift enterprise or lottery scheme, pursuant to and as a part of which they distributed and caused to be distributed, to representatives and prospective representatives in the various States, between 800,000 and 1,000,000 advertising or sales circulars containing pull card device and depictions of various articles of their merchandise, for sale and distribution to purchasing public under a plan by which determination of which of a number of articles enumerated, together with prices assigned thereto, in said circular, purchaser received, and prices paid by purchaser for such article and whether article having retail value and regular price greater than that designated therefor was thus secured, were determined by lot or chance, in accordance with number disclosed under particular tab of card selected by purchaser, and operator of card was compensated, after sale of all chances and remission of money, through opportunity to select, as premium, from other articles depicted in their said sales or advertising circular, article, or, at his option, by premium in cash which he might deduct from amount remitted; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale and distribution of their said merchandise, in accordance with sales plan or method above set forth, by persons or representatives to whom they furnished or distributed said sales or advertising circulars, containing such pull card devices as above set forth, and who used same in purchasing, selling, and distributing their said merchandise in accordance with such plan or method as above described, and notwithstanding "Notice to Purchaser" on each pull tab device advising reader that he had option of buying from holder of the book any article listed thereon at price shown, and under which sales plan or method facts as to whether purchaser received article of greater retail value than price designated therefor on tab, and which of said articles he received, and amount of money which he was required to pay therefor, were determined wholly by lot or chance, and benefits of which method said individuals reaped, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with those who are unwilling to use said or any other sales plan or method involving game of chance, gift enterprise, or lottery scheme, or any other sales plan or method which is contrary to public policy, and refrain therefrom;