

Complaint

IN THE MATTER OF

A. KRASNE, INC.

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

Docket 4280. Complaint, Aug. 28, 1940—Decision, Nov. 14, 1941

Where a corporation engaged in purchasing, selling, and distributing food products at wholesale, buying a substantial portion of its requirements from sellers in other States—

Received and accepted allowances and discounts in lieu of brokerage in substantial amounts through, usually, purchasing commodities at prices lower than those at which they were sold to other purchasers by an amount which reflected all or a portion of the brokerage currently being paid by the sellers to their respective brokers for effecting such sales:

Held, That in receiving and accepting allowances and discounts in lieu of brokerage fees or commissions from sellers upon such purchases, it violated the provisions of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John T. Haslett for the Commission.

Poses, Katcher & Driesen, of New York City, for respondent.

COMPLAINT¹

The Federal Trade Commission having reason to believe that the 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 subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 14), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, A. Krasne, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 845 East One Hundred and Thirty-sixth Street, New York, N. Y. Respondent is engaged in the business of purchasing, selling, and distributing food products at wholesale.

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchases commodities are caused to be shipped

¹ By a stipulation between respondent and the Commission, approved October 15, 1940, the complaint was amended, nunc pro tunc, by correcting respondent's name to "A. Krasne, Inc."

and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with the purchase of its requirements in interstate commerce, as aforesaid, respondent has received and accepted allowances and discounts in lieu of brokerage in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondent by purchasing commodities at prices lower than the prices at which such commodities are sold to other purchasers thereof by an amount which reflects all or a portion of the brokerage currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

PAR. 4. The receipt and acceptance of allowances and discounts in lieu of brokerage by respondent as set forth in paragraph 3 hereof is in violation of subsection (c) 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 an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C., title 15, sec. 13), the Federal Trade Commission, on the 28th day of August 1940, issued and thereafter served its complaint in this proceeding upon respondent A. Krasne, Inc., a corporation, charging the respondent with violation of the provisions of subsection (c) of section 2 of the said act. After the issuance and service of said complaint and the filing of respondent's answer the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts and expressly waiving the filing of briefs and oral argument, which substitute answer was duly filed in the office of the Commission.

Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and substitute answer; and the Commission, having duly considered the matter 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, A. Krasne, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 845 East One Hundred and Thirty-sixth Street, New York, N. Y. Respondent is engaged in the business of purchasing, selling, and distributing food products at wholesale.

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchases commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with the purchase of its requirements in interstate commerce, as aforesaid, respondent has received and accepted allowances and discounts in lieu of brokerage in substantial amounts.

Usually the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondent by purchasing commodities at prices lower than the prices at which such commodities are sold to other purchasers thereof by an amount which reflects all or a portion of the brokerage currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

CONCLUSION

In receiving and accepting allowances and discounts in lieu of brokerage fees or commissions from sellers upon purchases of commodities, as set forth in paragraph 3 hereof, the respondent has violated the provisions of subsection (c) of section 2 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 an act of Congress approved June 19, 1936 (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 substitute answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it

waives all intervening procedure and further hearings 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 that said respondent has violated the provisions of subsection (c) of section 2 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 an act of Congress approved June 19, 1936 (the Robinson-Patman Act), (U. S. C., title 15, sec. 13) :

It is ordered, That in the course of commerce, as "commerce" is defined in the aforesaid Clayton Act, the respondent A. Krasne, Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from :

1. Receiving or accepting, directly or indirectly, any allowance or discount in lieu of brokerage fees or commissions in whatever manner or form said allowances, discounts, brokerage fees, or commissions may be offered, allowed, granted, paid, or transmitted.

2. Receiving or accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage fee, or other compensation, or any allowance, or discount in lieu thereof upon purchases of commodities made by respondent.

It is further ordered, That the said 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

EWEN CAMERON, TRADING AS MERCHANDISE SALES
SYNDICATECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4417. Complaint, Dec. 14, 1940—Decision, Nov. 14, 1941*

Where an individual engaged in competitive interstate sale and distribution of billfolds, cameras, cosmetics, fountain pens, jewelry, smoking pipes, wearing apparel, and other articles, including assortments thereof which consisted of a large carton enclosing 80 or 81 small boxes, each holding an article of merchandise costing said individual from less than 1 to 6 cents each, and customarily retailing for from 2 to 25 cents each; with front of said carton constituting a pull card for use in sale and distribution of said small boxes under a plan by which the ultimate purchaser, for the 10 cents paid, secured that box, number of which corresponded to that secured by chance from card, and depicting thereon articles usually retailing at more than 10 cents each, purportedly contained therein,—

Sold such assortments, through brokers, to distributors or wholesalers, retail purchasers from whom exposed and sold them to the purchasing public in accordance with aforesaid sales plan, involving a game of chance, in that the facts as to which of a number of different articles purchaser would receive and whether or not the article secured was of less or greater value than the purchase price, were determined wholly by lot or chance, notwithstanding legend "Box may be opened and contents examined before purchasing," printed at the bottom of one side of the large carton in type so small and inconspicuously placed as to be visible and legible only upon the most minute examination, and which, it was evident, was not intended to, and did not, come to the attention of the purchasing public; said dealer thereby supplying to and placing in the hands of others the means of conducting lotteries in the sale of merchandise in accordance with aforesaid plan or method, in competition with others who, unwilling to adopt and use such or other sales method contrary to public policy, refrain therefrom;

With the result that many dealers in and ultimate consumers of such merchandise were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy his said merchandise in preference to that of his said competitors, and with effect of unfairly diverting trade to him from them; to the substantial injury of competition in commerce;

Held, That such acts and practices were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. Abram Z. Zietlein, of Chicago, Ill., for respondent