

Complaint

IN THE MATTER OF

BENJAMIN L. GRABOSKY AND SAMUEL GRABOSKY,
TRADING AS GRABOSKY BROTHERS

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

Docket 4740. Complaint, Mar. 26, 1942—Decision, Apr. 6, 1943

Where a firm, engaged in the manufacture and interstate sale and distribution of cigars to retail drug chains and independent retailers—

Contracted to make, and made, valuable payments to certain selected chain store customers, as compensation for the furnishing of services or facilities, such as counter, showcase, or window displays for the advertising of their cigars, making payments amounting to as much as \$255 a month to a single customer on the basis of \$1.50 per month per branch store, and to as much as \$500 a month on a flat sum basis, while refusing frequent requests to make such payments available on proportionally equal or any terms to independent retail customers and other chain store customers who were able and willing to furnish the same services and facilities and were competitive with customers compensated as aforesaid:

Held, That aforesaid payments, and contracts for such payments, were in violation of subsection (d) of sec. 2 of the Clayton Act, as amended.

Mr. W. C. Kern for the Commission.

Blumberg & Kleeblatt, of New York City, for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (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:

PARAGRAPH 1. Respondents, Benjamin L. Grabosky and Samuel Grabosky, are copartners, trading as Grabosky Bros., having their principal office and place of business at Northeast Corner Eleventh and Wood Streets, Philadelphia, Pa. Respondents operate and maintain manufacturing plants at Philadelphia, Pa., and at Perth Amboy, N. J.

PAR. 2. Respondents are now, and have been since June 19, 1936, engaged in the manufacture, sale, and distribution of cigars. Re-

Findings

36 F. T. C.

spondents sell and distribute their cigars to purchasers in the various States of the United States and in the District of Columbia, and cause the said cigars, when sold, to be shipped and transported from the States in which they are manufactured across State lines to the purchasers thereof in other States of the United States and in the District of Columbia. There is, and has been at all times mentioned herein, a constant current of trade and commerce in the said cigars between the respondents and purchasers in other States. Respondents' cigars are sold by them for use, consumption, or resale within the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents sell their cigars to retail drug chains and to independent retailers, who in turn sell to the consuming public. Respondents, since June 19, 1936, have contracted to make and have made, and are now making, valuable payments to some of their chain store customers selected by respondents, as compensation or in consideration for the furnishing by the said selected customers of services or facilities, such as counter, showcase, or window displays, for the advertising of respondents' cigars. Respondents have not made such payments or considerations available on proportionally equal terms to all of their customers competing with the aforesaid compensated customers in the distribution of respondents' cigars.

As examples of these practices respondents, during such period, as consideration for the aforesaid displays, have contracted to pay and have paid some chain store customers \$1.50 per month per branch store, the total monthly payments amounting to as much as \$255 to a single customer. With other chain store customers respondents have contracted to pay and have paid, during such period, flat sums for the said displays amounting to as much as \$500 per month to a single customer. Although often requested so to do by respondents' independent retailer customers and other chain store customers competing with these compensated customers, and who are able and willing to furnish the same services and facilities, respondents have refused to make such payments available to them on proportionally equal terms, or on any terms.

PAR. 4. The above-described acts and practices of respondents are in violation of subsection (d) 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).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved Oct. 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, approved June 19, 1936 (U. S. C. title 15, sec. 13), the Federal Trade Commission, on the 26th day of March, 1942, issued, and thereafter served, its complaint in this proceeding upon the respondents, Benjamin L. Grabosky and Samuel Grabosky, individuals, trading as Grabosky Bros., charging them with violation of the provisions of subsection (d) of sec. 2 of the said act, as amended. After the issuance and service of the said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an amended answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing relating thereto, such admissions of fact being solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals or the Supreme Court of the United States or in any other court proceeding instituted by the Federal Trade Commission for its enforcement. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and amended 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. Respondents, Benjamin L. Grabosky and Samuel Grabosky, are copartners, trading as Grabosky Brothers, having their principal office and place of business at Northeast Corner Eleventh and Wood Streets, Philadelphia, Pa. Respondents operate and maintain manufacturing plants at Philadelphia, Pa., and at Perth Amboy, N. J.

PAR. 2. Respondents are now, and have been since June 19, 1936, engaged in the manufacture, sale and distribution of cigars. Respondents sell and distribute their cigars to purchasers in the various States of the United States and in the District of Columbia, and cause the said cigars, when sold, to be shipped and transported from the States in which they are manufactured across State lines to the purchasers thereof in other States of the United States and in the District of Columbia. There is, and has been at all times since the above date, a constant current of trade and commerce in the said cigars between the respondents and purchasers in other States. Respondents' cigars are sold by them for use, consumption or resale within the United States and in the District of Columbia.

Order

36 F. T. C.

PAR. 3. In the course and conduct of their business respondents sell their cigars to retail drug chains and to independent retailers, who in turn sell to the consuming public. Respondents, since June 19, 1936, have contracted to make and have made, and are now making, valuable payments to some of their chain store customers selected by respondents, as compensation or in consideration for the furnishing by the said selected customers of services or facilities, such as counter, showcase or window displays, for the advertising of respondents' cigars. Respondents have not made such payments or considerations available on proportionally equal terms to all of their customers competing with the aforesaid compensated customers in the distribution of respondents' cigars.

As examples of these practices respondents, during such period, as consideration for the aforesaid displays, have contracted to pay and have paid some chain store customers \$1.50 per month per branch store, the total monthly payments amounting to as much as \$255 to a single customer. With other chain store customers respondents have contracted to pay and have paid, during such period, flat sums for the said displays amounting to as much as \$500 per month to a single customer. Although often requested so to do by respondents' independent retailer customers and other chain store customers competing with these compensated customers, and who are able and willing to furnish the same services and facilities, respondents have refused to make such payments available to them on proportionally equal terms, or on any terms.

CONCLUSION

The aforesaid payments, and contracts for such payments, as herein found, are in violation of 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, approved June 19, 1936 (U. S. C. title 15, sec. 13).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of respondents, in which amended answer 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 its conclusion that respondents have violated the provisions of sub-

section (d) 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).

It is ordered, That the respondents, Benjamin L. Grabosky and Samuel Grabosky, individually, and trading under the name of Grabosky Bros., or trading under any other name, their representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the sale of any of respondents' cigars in commerce, as "commerce" is defined in the said Clayton Act, do forthwith cease and desist:

From paying or contracting to pay, or granting or allowing anything of value to or for the benefit of any customer as compensation or in consideration of any counter, showcase or window displays or other services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any such product or commodity, unless such payments or allowances are available on proportionally equal terms to all other customers competing with such compensated customers in the distribution of such product or commodity.

It is further ordered, That the respondents, Benjamin L. Grabosky and Samuel Grabosky, individuals, trading as Grabosky Bros., shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist herein set forth.

IN THE MATTER OF
THE RICHMAN BROTHERS COMPANY

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

Docket 4844. Complaint, Oct. 2, 1942—Decision, Apr. 6, 1943

Where a corporation, engaged in the manufacture and interstate sale and distribution of men's clothing and other similar products, operating 62 retail stores in 57 cities throughout the United States, doing a mail-order business, and employing some 600 salesmen; by means of newspaper advertisements, catalogs, cards, and folders, and other advertising matter, directly and by implication—

Represented that its clothing had been recommended by all consumers' research bodies testing clothing; that all such research bodies, as a result of such tests, had rated its clothing as being of the best grade; and that the leading consumers' research bodies of the United States had investigated the outstanding brands of clothing and in every instance rated its clothes first in the low-priced field;

When in fact only three of the numerous consumers' research bodies in the United States had actually made tests of, and rated, its clothing;

With effect of misleading and deceiving a substantial portion of the purchasing public in aforesaid respects, and of thereby causing it to purchase substantial quantities of said products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Randolph Preston*, trial examiner.

Mr. B. G. Wilson for the Commission.

Jones, Day, Cockley & Reavis, of Cleveland, Ohio, for respondent.

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 The Richman Bros. Co., a corporation, hereinafter referred to as respondent, has 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, The Richman Bros. Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 1600 East Fifty-fifth Street, Cleveland, Ohio.