

Complaint

IN THE MATTER OF

ATLANTIC CITY WHOLESALE DRUG COMPANY ET AL.

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

Docket 4957. Complaint, May 3, 1943—Decision, June 14, 1944

- Where a corporation and two individuals, its president and sales and advertising manager, respectively, engaged in the wholesale drug business in competition with others similarly engaged, and in publishing a magazine, not as an independent business operated in good faith on a profit basis, but as a subterfuge knowingly designed and operated to induce prices which discriminated in its favor in the purchase of drugs, cosmetics and other merchandise—
- Induced manufacturers and sellers to enter into contracts with them for advertisements in said magazine, value of which was insubstantial, on the agreement or understanding that the charges made for such advertising—which was uniform neither as to amount required nor price charged therefor—would be credited upon their purchases from such manufacturers and sellers, and refused to make purchases from manufacturers or sellers unless they purchased such advertising;
- With result that they thereby obtained discriminations in price amounting to differentials in their favor of from 20 percent to about 40 percent less than their competitors paid such sellers for merchandise of like grade and quality, and were thus enabled to and did resell such products at prices substantially less than those charged by the manufacturers and distributors of such products to the same classes of customers;
- Effect of which discriminations in price induced and received by them was substantially to lessen competition and to tend to create a monopoly in the sale and distribution of drug products and to injure, destroy, and prevent competition between said corporation and its customers on the one hand and their competitors on the other hand and between and among customers of each:
- Held, That such acts and practices, under the circumstances set forth, were in violation of Sec. 2 (f) of an Act of Congress approved October 15, 1914, as amended by an Act of Congress approved June 19, 1936.
- Before *Mr. John L. Hornor*, trial examiner.
Mr. Edward S. Ragsdale for the Commission.
Frank & Frank, of New York City, for Atlantic City Wholesale Drug Co. and Roy H. Cochran.

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 Section 2 of the Clayton Act, as amended by the Robinson-Patman Act approved June 19, 1936 (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent, Atlantic City Wholesale Drug Company, is a corporation, organized and existing under the laws of the State

of New Jersey, having its office and principal place of business in the Boardwalk National Arcade Building, Atlantic City, N. J.

The individual respondent, Roy H. Cochran, is president of the respondent corporation, and is now, and for the last several years has been, in active and direct charge of the management and operation of said respondent corporation.

The individual respondent, Rodney S. Pullen, Jr., is now, and was during several periods of time since June 19, 1936, actively engaged with Roy H. Cochran in the operation of the respondent corporation, and for a period of such time was sales and advertising manager of the respondent corporation.

PAR. 2. The respondent corporation, with the active cooperation, aid and assistance of the individual respondents, is now and has been since June 19, 1936, engaged in the wholesale drug business and has bought, sold and distributed in interstate commerce, drugs, cosmetics and other merchandise for its own account, and during this period of time, in the course and conduct of said business, has been in substantial competition with other corporations, individuals, partnerships and firms similarly engaged in the business of buying, selling and distributing drugs, cosmetics and other merchandise in interstate commerce.

PAR. 3. Each of the respondents and the competitors of respondents buy said drugs, cosmetics and other merchandise from a large number of manufacturers, jobbers, importers and distributors (hereinafter called sellers), located in the various States of the United States. Each of said sellers sells and distributes drugs, cosmetics, or other merchandise in commerce between and among the various States of the United States and the District of Columbia and cause said drugs, cosmetics and other merchandise to be shipped and transported from their respective places of business in the various States of the United States to the respondent corporation at its principal place of business in Atlantic City, N. J., and to competitors of said respondent and to competitors' customers located in various States of the United States and the District of Columbia. The respondents and the respondents' competitors resell and distribute said drugs, cosmetics and other merchandise in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. The respondent corporation, since June 19, 1936, with the active cooperation, aid and assistance of the individual respondents, has adopted, followed and pursued purchasing policies and practices which were knowingly designed and intended to induce, and did induce, discriminatory prices favorable to the respondent corporation in its purchases of said drugs, cosmetics and other merchandise.

The parties respondent, pursuant to and in furtherance of said purchasing policy and practices, have caused a magazine to be published, first under the trade name of Shore Topics, the name of which was thereafter changed to the Boardwalker (both of the magazines are hereinafter referred to as the magazine). The magazine has been issued under one name or the other at irregular intervals, but usually twelve issues are published each year. The publication of the aforesaid magazines is not an independent business operated in good faith on a profit basis, but is a subterfuge, knowingly designed and operated solely as an incident to the wholesale drug business and operated by the respondents primarily as an instrument for obtaining discriminations in prices on drugs, cosmetics and other merchandise.

Since June 19, 1936, numerous sellers have been induced, and are being induced, to enter into contracts or agreements authorizing advertisements to be inserted in the magazine, which contracts or agreements either provide, or it is so understood and so carried out, that the charges made for said advertisements shall be credited on the purchase price of the drugs, cosmetics and other merchandise purchased by the respondent corporation from such sellers. The respondents refuse to purchase said drugs, cosmetics or other merchandise from said sellers unless such sellers purchase advertising in its magazine and all, or a very large percentage, of the drug, cosmetics and other merchandise purchased by respondents is purchased only from sellers who advertise in respondents' magazine. The respondent corporation, with the cooperation, aid and assistance of the individual respondents, receives information as to the prices paid by its competitors to said sellers for said drugs, cosmetics or other merchandise and knowingly induces said sellers to grant it substantially lower and discriminatory prices by refusing to purchase said drugs, cosmetics or other merchandise from said sellers unless said sellers pay to respondent corporation a substantial portion of the regular purchase prices of said merchandise for advertising in respondents' magazine.

The discriminations in price which favor the respondents are not uniform on all drugs, cosmetics or other merchandise purchased, or from each seller, varying either with drugs, cosmetics and other merchandise, or with the sellers. As a result, the respondents pay said sellers from approximately twenty percent to approximately forty percent less than respondents' competitors pay said sellers for drugs, cosmetics and other merchandise of like grade and quality. The magazine had no real value as an advertising medium and there were no substantial benefits and considerations accruing to sellers who enter into contracts for such advertising with the respondents and who agree to pay and do pay respondents, directly or indirectly, for such advertising or by granting and allowing credits, discounts and allowances to the respondents on respondents' purchases of drugs, cosmetics and other merchandise.

PAR. 5. The effect of said discriminations in price, as set forth above, may be substantially to lessen competition, in the line of commerce in which the respondents and their competitors are engaged, and to injure, destroy, or prevent competition with respondents, in the resale of said drugs, cosmetics and other merchandise of like grade and quality purchased from said sellers.

PAR. 6. The foregoing alleged acts of each of said respondents are a violation of Section 2 (f) of the said Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

-Pursuant to the provisions 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," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Com-

mission, on May 3, 1943, issued and subsequently served its complaint upon the respondents, Atlantic City Wholesale Drug Company, a corporation, Roy H. Cochran, individually and as president of Atlantic City Wholesale Drug Company, and Rodney S. Pullen, Jr., individually and as sales and advertising manager of Atlantic City Wholesale Drug Company, charging them with violating the provisions of subsection (f) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of the answers of respondents, Atlantic City Wholesale Drug Company, a corporation, and Roy H. Cochran, an individual, thereto, testimony and other evidence in support of the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, and report of the trial examiner upon the evidence and exceptions filed thereto (no brief having been filed by attorney for the Commission or attorney for the respondents and oral argument not having been requested); 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. The respondent, Atlantic City Wholesale Drug Company, is a corporation, organized and existing under the laws of the State of New Jersey, having its office and principal place of business in the Boardwalk National Arcade Building, Atlantic City, N. J. Respondent, Roy H. Cochran, who resides at 5011 Ventnor Avenue, Ventnor, N. J., is an individual and was president of respondent corporation and was in active and direct charge of the management and operation of said corporate respondent. Respondent, Rodney S. Pullen, Jr., whose present address is 241 Moss Avenue, Oakland, Calif., is an individual and at various periods of time since June 19, 1936, was actively engaged with respondent Roy H. Cochran in the operation of respondent corporation and for a period of such time was sales and advertising manager of respondent corporation.

The individual respondents, during the times herein mentioned, have had dominant control of the business activities of said corporate respondent. All of the respondents have acted in conjunction and cooperation with each other in doing the acts and practices hereinafter described.

PAR. 2. The respondents, since June 19, 1936, have been engaged in the wholesale drug business and have bought, sold, and distributed drugs, cosmetics, and other merchandise for their own account in commerce among and between the various States of the United States, and in the course and conduct of said business have been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of buying and selling drugs, cosmetics, and other merchandise in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of said business, the respondents purchased drugs, cosmetics, and other merchandise from various manu-

facturers, jobbers, importers, and distributors located in various States of the United States, which said merchandise was shipped by the sellers thereof to the respondents at their place of business in Atlantic City, N. J., and the respondents, in turn, resold and distributed said drugs, cosmetics, and other merchandise to purchasers thereof located in various States other than the State of New Jersey.

PAR. 4. The respondent corporation, since June 19, 1936, with the active cooperation, aid, and assistance of the individual respondents, has adopted, followed, and pursued purchasing policies and practices which were knowingly designed and intended to induce, and did induce, discriminatory prices favorable to the respondent corporation in its purchases of drugs, cosmetics, and other merchandise of like grade and quality to those purchased by competing purchasers.

PAR. 5. The respondents, pursuant to and in furtherance of said purchasing policy and practices, caused a magazine to be published, first under the trade name of "Shore Topics," which name was later changed to "The Boardwalker." Manufacturers and sellers were induced to enter into contracts or agreements authorizing advertisements to be inserted in said magazine, which contracts or agreements either provided, or it was so understood and so carried out, that the charges made for said advertisements were to be credited on the purchase price of the drugs, cosmetics, and other merchandise purchased by respondents from such manufacturers and sellers.

In carrying out their purchasing policies and practices, the respondents refused to purchase drugs, cosmetics, and other merchandise from the manufacturers or sellers thereof unless such manufacturers or sellers purchased advertising in respondents' magazine, and all or a very large percentage of the drugs, cosmetics, and other merchandise purchased by respondents was purchased only from manufacturers or sellers who advertised in respondents' magazine.

The amount of advertising which the respondents required the manufacturer or seller to purchase and credit upon sales made to the respondents was not uniform, and the prices charged by the respondents for advertising space in said magazine varied as between advertisers.

PAR. 6. The Commission finds that the publication of respondents' magazine was not an independent business operated in good faith on a profit basis but was a subterfuge knowingly designed and operated solely as an incident to their wholesale drug business and was operated by respondents primarily as an instrument for obtaining discriminations in price favorable to them from manufacturers and sellers of drugs, cosmetics, and other merchandise. Respondents' magazine had no substantial value as an advertising medium, and there were no substantial benefits or considerations accruing to manufacturers and sellers who entered into contracts for such advertising with the respondents and who agreed to pay, and did pay, the respondents directly or indirectly for such advertising by granting and allowing credits, discounts, and allowances to respondents on respondents' purchases of drugs, cosmetics, and other merchandise.

PAR. 7. The discriminations in price thus obtained by the respondents were substantial, amounting to differentials in favor of respondents of from 20 percent to approximately 40 percent less than respondents' competitors paid said sellers for drugs, cosmetics, and other merchandise of like grade and quality, and as a result thereof it was possible for the respondents to, and they did, resell such drugs, cosmetics, and other mer-

chandise to retail dealers and other purchasers at prices substantially less than those charged by the manufacturers and distributors of such products to the same classes of customers.

PAR. 8. The effect of the aforesaid discriminations in price induced and received by the respondents has been substantially to lessen competition and to tend to create a monopoly in the sale and distribution of drug products and to injure, destroy, and prevent competition between and among the corporate respondent and its customers on the one hand and their competitors on the other hand and between and among customers of each.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are in violation of Section 2(f) of said Act of Congress approved June 19, 1936, 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 (Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondents, Atlantic City Wholesale Drug Company, a corporation, and Roy H. Cochran, individually and as president of said corporate respondent, testimony and other evidence in support of the allegations of said complaint, and report of the trial examiner upon the evidence and exceptions filed thereto; and the Commission having made its findings as to the facts and its conclusion that the respondent, Atlantic City Wholesale Drug Company, a corporation, and the individual respondents, Roy H. Cochran and Rodney S. Pullen, Jr., have violated subsection (f) of Section 2 of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by Act of June 19, 1936 (Robinson-Patman Act).

It is ordered, That the respondent, Atlantic City Wholesale Drug Company, a corporation, and its officers, representatives, agents, and employees, and the individual respondents, Roy H. Cochran and Rodney S. Pullen, Jr., and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the purchase of drugs, cosmetics, and other merchandise by the respondents, or any of them, in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Inducing sellers to contract for or purchase advertising space in any magazine or publication published by the respondents, or any of them, at prices greater than the actual value of such space as an advertising medium to the sellers paying therefor.

2. Inducing sellers to discriminate in price between the respondents, or any of them, and other purchasers of commodities of like grade and quality by granting, allowing, or paying to said respondents, or any of them, any advertising allowances or anything of value in lieu thereof which is not granted by such sellers to all other customers on proportionately equal terms.

3. Receiving and accepting any discriminatory price or the benefit of any discrimination in price obtained in the manner set forth in, and prohibited by, this order.

It is further ordered, That the respondents 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 this order.

Complaint

38 F. T. C.

IN THE MATTER OF
JAMES JEBAILY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT APPROVED SEPT. 26, 1914, AND
THE WOOL PRODUCTS LABELING ACT OF 1939, APPROVED OCT. 14, 1940.

Docket 5066. Complaint, Oct. 21, 1943—Decision, June 14, 1944

Where a corporation engaged in the manufacture of women's robes, housecoats, pajamas and other articles of wearing apparel, some of which were made from rayon and some from fabrics composed of rayon and other fibers—

- (a) Misleadingly and deceptively failed to inform the purchasing public in words familiar to it that certain articles of women's clothing, and outer and inner linings of others simulating fabrics of silk, product of the cocoon of the silk worm, were not made from silk but from rayon, whereby many members of said public were led to believe that articles in question were composed of silk;
- (b) Misleadingly and deceptively designated certain of aforesaid clothing in advertisements as "taffeta," "crepe" and "satin," accompanied in many instances by word "Celanese," but without accompanying the same with words familiar to the purchasing public disclosing fact that fabrics in question were not composed of silk which, as aforesaid, they resembled, but of rayon, whereby many members of said public were led to believe that such fabrics were silk;

With effect of misleading and deceiving wholesale and retail purchasers of its said clothing, and members of the purchasing public, as to the fiber content thereof, and of placing in the hands of said dealers a means and instrumentality whereby they might and did mislead and deceive the purchasing public as to the fiber content of said clothing, as a result of which substantial quantities of its products were purchased as composed wholly of silk;

- (c) Sold certain products composed in whole or in part of wool, reprocessed wool, or reused wool, misbranded in violation of the Wool Products Labeling Act of 1939 in that they did not have affixed thereto a stamp, tag, etc. showing the percentage of the total fiber weight of wool, reprocessed wool, reused wool and non-wool fiber, and maximum percentage of adulterating matter; and proper identification of the manufacturer, seller, etc. subject to the Act:

Held, That such acts, practices and methods, 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, within the intent and meaning of acts concerned.

Mr. DeWitt T. Puckett for the Commission.

Rigby, Leon & Weill, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that James Jebaily, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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: