

Complaint

IN THE MATTER OF
UNITY STAMP COMPANY, INC.

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

Docket 5048. Complaint, Sept. 15, 1943—Decision, Oct. 23, 1947

Where a corporation engaged in processing and manufacturing straight-line rubber stamps, and in the competitive interstate sale and distribution thereof direct to the consuming public—

Discriminated in price between different purchasers of its said stamps in that, among general discriminatory practices it (1) sold to some customers, stamps 3 inches or less in length and three-eighths inch or less in height, at 4 cents per line plus 4 cents for each additional line or fraction thereof, while charging other purchasers of the same type of stamp, prices which varied from 5 to 35 cents per line plus an additional sum for each additional line or fraction thereof; and (2) sold rubber stamps of like grade and quality at prices which varied from 4 to 15 cents per line 2 inches or less in length and three-eighths inch or less in height, plus an additional sum for each additional line or fraction thereof;

Effect of which discriminations in price had been and might be substantially to lessen competition and to injure, destroy, and prevent competition between it and its competitors in the sale and distribution of said products in interstate commerce, and had been and might be to tend to create in it a monopoly in such line of commerce:

Held, That such acts and practices, under the circumstances set forth, were in violation of the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. William C. Kern and *Mr. James B. Truly* for the Commission.
Mr. Frank D. Chaiken, of New York City, 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 been and is now violating the provisions of subsection (a) 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. Respondent Unity Stamp Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 7 West Thirtieth Street, New York, N. Y.

Complaint

44 F. T. C.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of processing, manufacturing, offering for sale, selling, and distributing made-to-order straight line stamps, hereinafter referred to as rubber stamps. Such commodities processed and manufactured by the respondent are sold direct to the consuming public. Some customers of the respondent purchasing such products are located in States other than the State in which respondent's business is located and some customers, although located within the State in which the respondent's business is located, direct that the shipment of their purchases be made by the respondents to their branch offices located in States other than the State in which the respondent's business is located, and in such cases respondent causes such products to be shipped and transported across State lines from respondent's place of business to such customers or to such branch offices of such customers. There is and has been at all times mentioned a continuous course of trade and commerce in said products between respondent's factory and the purchasers of said products, some of which are located in States other than the State in which respondent's business is located, as aforesaid. Said products are sold and distributed for use within the various States of the United States.

PAR. 3. In the course and conduct of its business in commerce as aforesaid, respondent is now and during the time herein mentioned has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of processing, manufacturing, offering for sale, selling, and distributing rubber stamps.

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 buying such products of like grade and quality by selling its products to some of its customers at higher prices than it sells its products of like grade and quality to other of its customers.

Among the general practices pursued by the respondent in so discriminating in price the Commission alleges that:

(1) To some customers the respondent has sold rubber stamps 3 inches or less in length and three-eighths or less in height at 4 cents per line, plus 4 cents for each additional line or any fraction thereof, while to other customers purchasing the same type of rubber stamp of like grade and quality, the respondent has charged for each product varying prices of 5, 7, 8, 10, 15, 20, 30, or 35 cents per line 3 inches or less in length and three-eighths inch or less in height plus in each

instance an additional sum for each additional line or any fraction thereof.

(2) The respondent has sold at approximately the same time rubber stamps of like grade and quality at varying prices of 4, 5, 7, 10, and 15 cents per line 2 inches or less in length and three-eighths inch or less in height plus in each instance an additional sum for each additional line or any fraction thereof.

PAR. 5. The effect of the discriminations in price set forth in paragraph 4 hereof has been and may be substantially to lessen competition and to injure, destroy, and prevent competition between respondent and its competitors in the sale and distribution of rubber stamps in interstate commerce and has been and may be to tend to create a monopoly in respondent in said line of commerce.

PAR. 6. The foregoing acts and practices of said respondent are in violation of the provisions of subsection (a) 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the 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 (15 U. S. C. sec. 13), the Federal Trade Commission issued and subsequently served its complaint in this proceeding upon the respondent, Unity Stamp Co., Inc., a corporation, charging it with the violation of subsection (a) of section 2 of that act, as amended. After the filing by respondent of its answer to the complaint, the Commission granted respondent's motion for leave to withdraw its answer and to substitute therefor an answer admitting all of the material allegations of fact in the complaint but denying that the facts alleged in the complaint constituted a violation of said statute. Subsequently, the matter regularly came on for final consideration by the Commission upon the complaint, substitute answer, briefs in support of and in opposition to the complaint and oral argument, 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. The respondent, Unity Stamp Co., Inc., is a corporation organized and existing under and by virtue of the laws of the

State of New York, with its principal office and place of business located at 7 West Thirtieth Street, New York, N. Y.

PAR. 2. Respondent is now and since June 19, 1936, has been engaged in the business of processing, manufacturing, offering for sale, selling, and distributing made-to-order, straight-line stamps, hereinafter referred to as rubber stamps. These stamps are sold by respondent direct to the consuming public. Some of the customers of respondent purchasing its stamps are located in States of the United States other than the State in which respondent's business is located and other customers, although located within the State in which respondent's business is located, direct that their purchases be shipped by respondent to such customers' branch offices located in States other than that in which respondent's business is located. In such cases respondent causes the stamps to be shipped and transported across State lines from respondent's place of business to such customers or to their branch offices. There is now and at all times mentioned herein has been a continuous course of trade and commerce in such stamps between respondent's factory and the purchasers of the stamps. The stamps are sold and distributed for use within the various States of the United States.

PAR. 3. In the course and conduct of its business in commerce as aforesaid, respondent is now and at all times mentioned herein has been in substantial competition with other corporations and with individuals, partnerships and firms engaged in the business of processing, manufacturing, offering for sale, selling and distributing rubber stamps.

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 of its stamps by selling such stamps to some of its customers at prices higher than those at which it sells stamps of like grade and quality to other customers.

Among the general practices pursued by respondent in so discriminating in price are the following:

(1) To some customers respondent has sold rubber stamps 3 inches or less in length and three-eighths inch or less in height at 4 cents per line, plus 4 cents for each additional line or any fraction thereof, while to other customers purchasing the same type of rubber stamp of like grade and quality, respondent has charged for each product varying prices of 5, 7, 8, 10, 15, 20, 30, or 35 cents per line 3 inches or less in length and three-eighths inch or less in height plus in each instance an additional sum for each additional line or any fraction thereof.

(2) Respondent has sold at approximately the same time rubber stamps of like grade and quality at varying prices of 4, 5, 7, 10, and 15 cents per line 2 inches or less in length and three-eighths inch or less in height plus in each instance an additional sum for each additional line or any fraction thereof.

PAR. 5. The effect of the discriminations in price set forth in paragraph 4 has been and may be substantially to lessen competition and to injure, destroy, and prevent competition between respondent and its competitors in the sale and distribution of rubber stamps in interstate commerce, and has been and may be to tend to create a monopoly in respondent in such line of commerce.

CONCLUSION

The acts and practices of respondent as herein found are in violation of the provisions of subsection (a) of section 2 of the aforesaid Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admitted all of the material allegations of fact in the complaint but denied that the facts alleged constituted a violation of the statute in question, and upon briefs in support of and in opposition to the complaint and oral argument, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of subsection (a) of section 2 of the 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 (15 U. S. C., sec. 13):

It is ordered, That the respondent, Unity Stamp Co., Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale of rubber stamps in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from—

1. Discriminating, directly or indirectly, in the price of rubber stamps of comparable size and like grade and quality by selling such rubber stamps to any purchaser at a price or prices materially different from those at which sales are made to any other purchaser: *Provided*, however, That this prohibition shall not be construed as prohibiting differentials permitted by section 2 of the Clayton Act as amended.

Order

44 F. T. C.

2. Otherwise discriminating in price, either directly or indirectly, among different purchasers of rubber stamps of like grade and quality in any manner prohibited by section 2 (a) of the Clayton Act as amended.

It is further ordered, That the 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

PAUL CASE

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 4813. Complaint, Aug. 14, 1942—Decision, Oct. 24, 1947

Where an individual engaged in the interstate sale and distribution of his "Case Combination New Method Improved"—also designated as "The New Improved Case Combination Method" and "Case Combination Formula"—which consisted of two medicinal preparations, designated as "Formula No. 1" and "Formula No. 2," recommended for use in combination in the treatment of rheumatism, arthritis, sciatica, neuritis, and similar conditions; through advertisements in newspapers and periodicals, and by form letters, circulars, and other advertising media; directly and by implication—

(a) Represented that his said "Combination Method" was a cure or remedy and constituted a competent and effective treatment for rheumatism, sciatica, arthritis, neuritis, and neuralgia and that said treatment would relieve the pains symptomatic of, and associated with, such conditions, and that the longer the treatment was taken the greater the improvement and the more lasting the benefit; and

(b) Represented that the formulas for his said medicinal preparations constituted a recognized and accepted therapeutic treatment used and prescribed by the medical profession for the treatment of aforesaid diseases, and of pains that affect the joints and muscles, and that the use of each of said preparations in conjunction with the other increased the therapeutic value of each preparation;

When in fact they had no therapeutic value in the treatment of such conditions in excess of furnishing temporary relief from minor pains symptomatic of, or associated with such diseases and conditions; had no curative action on the underlying factors that cause the symptoms of pain; and various aforesaid representations were false;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby into the purchase of substantial quantities of the preparations concerned:

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.

In a proceeding in which the complaint challenged respondent's representations in behalf of two preparations offered by him as a combination method for the treatment of rheumatism, sciatica, arthritis, neuralgia, and neuritis, and in which one of the respondents testified that hyperacidity and constipation were among the causative factors of such diseases, but admitted that this was his own theory and that it was contrary to accepted medical opinion, the testimony of other expert witnesses indicated that said theory was contrary to the consensus of such opinion.