

Complaint

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IN THE MATTER OF

JACQUES KREISLER MANUFACTURING CORPORATION
ET AL.

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 APPROVED JUNE 19, 1936

Docket 5446. Complaint, June 17, 1946—Decision, Aug. 11, 1948

Where a corporation and two officers thereof, engaged in the manufacture and competitive interstate sale and distribution of jewelry products under their "retro-active quantity discount plan," pursuant to which customers were allowed discounts based upon their total purchases during the calendar year, and which included a schedule of ten graduated discounts, beginning with 2½ percent for a \$500 volume of purchases and 5 percent for a \$750-volume, and ending with 22½ percent for a volume of \$11.250 and 25% for \$15,000 or over;

In soliciting orders through their salesmen who called on all customers, without distinction and regardless of whether a customer qualified for a discount or not, at their places of business, and received and transmitted orders for invoicing and shipment to such customers—

Discriminated in price through treating collectively customers who were members of and affiliated with so-called chain organizations or other group-buying organizations, even though they were separate, distinct and individual legal and business entities, and granting to each such customer the retro-active quantity discount applicable to a single buyer who purchased the amount equivalent to the collective purchases of all members of the particular chain or group-buying organization;

Effect of which discriminations in price of from 2½ to 25 percent among their competing customers, not shown as making only due allowance for differences in costs of manufacture, sale, and delivery resulting from differing methods or quantities in which their products were sold and delivered, might be substantially to lessen competition in the lines of commerce concerned:

Held, That such acts and practices in granting discriminations as above set forth constituted violations of sub-section (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Daniel J. Murphy for the Commission.

Parker, Chapin & Flattau, 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 vio-

lated and are now violating the provisions of subsection (a), 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. Respondent, Jacques Kreisler Manufacturing Corp., is a corporation organized and existing under the laws of the State of New Jersey with principal office and place of business located at 9015 Bergenline Avenue, North Bergen, N. J.

PAR. 2. Respondent, Jacques Kreisler, is the president, and respondent, Tobias Stern, is the secretary and treasurer, of the respondent, Jacques Kreisler Manufacturing Corp.

PAR. 3. Respondents are now, and have been since prior to June 19, 1936, engaged in the business of manufacturing jewelry products which they distribute and sell to retail jewelers located throughout the various States of the United States other than the State of New Jersey, causing said jewelry products, when sold, to be transported from the place of manufacture within said State of New Jersey to the purchasers thereof located in States other than the State of New Jersey. There is, and has been at all times herein mentioned, a continuous current of trade and commerce in said jewelry products across State lines between respondents' factory and the purchasers of such products. Said jewelry products are distributed and sold for use, consumption, and resale within the various States of the United States and the District of Columbia.

PAR. 4. Respondents, in the course and conduct of their business since June 19, 1936, have been and are now in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, distributing, and selling jewelry products in commerce between and among the various States of the United States and the District of Columbia. Respondents' sales of jewelry products in 1945, amounted to approximately \$2,500,000.

PAR. 5. In the course and conduct of their business, as aforesaid, since June 19, 1936, respondents have been, and are now, discriminating in price between different purchasers of their jewelry products of like grade and quality, which products are sold by respondents for use, consumption, and resale within the various States of the United States, in that respondents have been, and are now, selling such products to some of their purchasers at lower prices than the prices given or allowed by respondents to other purchasers competitively engaged with the favored customers.

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Respondents' discriminations in prices have included the granting and allowing certain purchasers larger discounts from list prices in the form of cash or credit invoices than those given or allowed by respondents to other purchasers. The extent of said discriminations in prices varies from differentials of 2½ to 25 percent from the list prices.

PAR. 6. Respondents, in early 1939, initiated and made effective their so-called "Kreislser Retro-Active Quantity Discount Plan." Under said plan, customers of respondents were given and allowed a retro-active quantity discount based upon their total purchases of jewelry products during the calendar years as follows:

	Percent		Percent
\$500-----	2½	\$3, 000-----	15
\$750-----	5	\$5, 500-----	17½
\$1, 000-----	7½	\$7, 500-----	20
\$1, 500-----	10	\$11,250-----	22½
\$2, 500-----	12½	\$15, 000 or over-----	25

Many of respondents' customers do not qualify to earn any retro-active quantity discounts; other customers qualify to earn a retroactive quantity discount from 2½ to 25 percent. Whether a customer qualifies to earn such a discount or not, respondents' methods in soliciting and receiving orders from all customers is the same. Respondents' salesmen customarily call on the customers at their respective and geographically separately places of business throughout the country and solicit and receive orders; such orders are transmitted to respondents who invoice and ship the merchandise to the purchasers at their respective places of business.

Many of respondents' customers are members of or affiliated with so-called chain organizations or other group buying organizations; even though such customers are separate, distinct, and independent legal and business entities, doing business with respondents as aforesaid, respondents treat all the purchasers who are members of or affiliated with each such chain or group buying organization collectively, as constituting the purchases of a single customer, and grant to each of said customers the retroactive quantity discount which respondents have determined are applicable to a single purchaser who purchases the amount purchased by all collective members of each of the respective chain or group buying organization.

Respondents, on all purchases of solid gold jewelry, limit the customer to a maximum cumulative discount of 10 percent even though

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the total purchases of such products would place the customer in a higher discount bracket. However, the customers' purchases of solid gold jewelry are figured into the customer's total annual purchases of all jewelry products and thus the customer will receive a higher cumulative discount on the nonsolid gold products.

Respondents, under their said retroactive discount plan, pay said discounts at the end of a calendar year in the form of a check or a letter of credit. One-half of the discount earned is paid by the respondents, the other half is borne by the salesman covering the territory in which the customer is located. In 1945 approximately \$141,510.82 was paid out under the said retroactive discount plan. Respondents made a special exception in connection with the purchases of three large retail customers by allowing the discounts to be deducted from each purchase, viz. Kay Jewelry Stores, Washington, D. C., was allowed to deduct a discount of 25 percent from each invoice; Busch Credit Jewelers, Pittsburgh, Pa., and Finlay Strauss Stores, New York, N. Y., were allowed respectively to deduct a discount of 20 percent from each invoice. Under this special arrangement an adjustment would be made at the end of the calendar year if the said customers were entitled to a greater or a lesser discount. In the year 1945: Kay Jewelry Stores and Finlay Strauss Stores earned the discounts so deducted; Bush Credit Jewelers earned a discount of 25 percent and an adjustment was so made.

The following are representative of respondents' customers who received a retroactive discount for 1944, the percent of discount allowed and the actual amount of discount paid:

Name	City and State	Percent	Discount
Lewis Jewelry Co.....	Cleveland, Ohio.....	15	\$588.68
Checel Jewelry Co.....	do.....	7½	107.49
Associated Barr Stores.....	Philadelphia, Pa.....	17½	1,071.78
J. E. Caldwell Co.....	do.....	2½	13.20
R. Harris & Co.....	Washington, D. C.....	15	494.59
Benson Jewelry Co.....	do.....	5	40.90
Roberts Credit Jewelers, Inc.....	Baltimore, Md.....	15	620.09
Reliable Store Corp.....	do.....	20	1,690.45
George Gerber Co.....	Providence, R. I.....	15	699.92
Baird-North, Inc.....	do.....	7½	77.24
Markson Bros.....	Boston, Mass.....	15	807.20
Homer's, Inc.....	do.....	7½	83.48
B. Spector & Bros., Inc.....	New Haven, Conn.....	17½	1,010.55
Sykes & Libby.....	do.....	5	44.90
Moses Dyckman.....	New York, N. Y.....	22½	1,542.13
Home Jewelry Co.....	do.....	10	167.94

PAR. 7. The effect of the discriminations in prices as hereinabove set forth may be substantially to lessen competition in the sale and

distribution of jewelry products in the respective lines of commerce in which respondents and their customers are engaged, and has been, and may be, to injure, destroy or prevent competition in the sale and distribution of said products with the respondents and with their customers who receive the benefits of such discriminatory prices.

Such discriminatory prices by the respondents between different purchasers of jewelry products of like grade and quality in interstate commerce in the manner and form aforesaid are in violation of the provisions of subsection (a) of section 2 of the Clayton Act described in the preamble hereof.

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 (Robinson-Patman Act) (U. S. C. title 15, sec. 13), the Federal Trade Commission on June 17, 1946, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with violation of the provisions of subsection (a) of section 2 of the said Clayton Act, as amended. Thereafter, a stipulation and a supplemental stipulation were entered into whereby it was stipulated and agreed that these statements of facts signed and executed by counsel for the respondents and the chief trial counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of or in opposition to the charges stated in the complaint, and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusions based hereon, and enter an order disposing of the proceeding without other intervening procedure. The said supplemental stipulation as to the facts was conditioned upon the final decision in a proceeding by the Commission against Morton Salt Co., which condition having been satisfied by the decision of the Supreme Court of the United States on May 3, 1948, in *Federal Trade Commission vs. Morton Salt Co.* reversing the judgment of the Circuit Court of Appeals, this proceeding regularly came on for final hearing before the Commission on said complaint and stipulations. The stipulation having been approved, accepted, and filed, and the Com-

mission 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. (a) Respondent Jacques Kreisler Manufacturing Corp. is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at 9015 Bergenline Avenue, North Bergen, N. J.

(b) Respondent Jacques Kreisler is president of the respondent corporation, with his address at the offices of said corporation.

(c) Respondent Tobias Stern is secretary and treasurer of the respondent corporation, with his address at the offices of the said corporation.

(d) Since prior to June 19, 1936, the aforesaid respondents have been and are now engaged in the business of manufacturing jewelry products which they sell and distribute for use, consumption, and resale within the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, respondents cause their said jewelry products, when sold, to be transported from their place of business in the State of New Jersey to the purchasers thereof at their various points of location in States other than the State of New Jersey, and respondents have at all times herein mentioned maintained, and now maintain, a continuous current of trade in commerce, as "commerce" is defined in the said Clayton Act, in said jewelry products among and between the various States of the United States and in the District of Columbia.

PAR. 3. In carrying on their aforesaid business, the respondents have been and are now in substantial competition with various corporations, individuals, partnerships, and firms also engaged in the business of manufacturing, distributing, and selling jewelry products in commerce between and among the various States of the United States and in the District of Columbia. Sales of such products by respondents in 1945 amounted to approximately \$2,500,000.

PAR. 4. Early in 1939 respondents formulated, adopted, and put into operation their so-called "Kreiskler Retro-active Quantity Discount Plan." Under this plan customers of respondents were given and allowed a retroactive quantity discount based upon their total pur-

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chases of jewelry products from respondents during the calendar year as follows:

Volume of purchases:	Percentage of discount
\$500 -----	21½
\$750 -----	5
\$1,000 -----	71½
\$1,500 -----	10
\$2,500 -----	121½
\$3,500 -----	15
\$5,500 -----	171½
\$7,500 -----	20
\$11,250 -----	221½
\$15,000 or over -----	25

Under this plan certain of respondents' customers did not qualify for any retroactive quantity discount, while other and competing customers qualified for retroactive quantity discounts of from 21½ percent to 25 percent. Regardless of whether a customer qualified for a discount or not, respondents' methods in soliciting and receiving orders from all customers were the same. Respondents' salesmen customarily called on customers at their respective places of business throughout the country, solicited and received such orders, which were transmitted to respondents, who invoiced and shipped the merchandise to the purchasers at their respective places of business. Certain of respondents' customers were members of or affiliated with so-called chain organizations or other group-buying organizations, even though such customers were separate, distinct, and independent legal and business entities doing business with respondents as aforesaid. All purchasers who were members of or affiliated with each such chain or group-buying organization were treated collectively by respondents and their purchases aggregated for discount purposes as if they were the purchases of a single customer. The retroactive quantity discount granted to each such customer was that which respondents had determined was applicable to a single purchaser who purchased the amount equivalent to the collective purchases of all customers who were members of the particular chain or group-buying organization.

PAR. 5. The acts and practices of respondents in granting the discounts given as aforesaid resulted in discriminations in price of from 2½ percent to 25 percent among competing customers of respondents, and the effect of such discriminations may be substantially to lessen competition in the lines of commerce in which respondents

and their customers are engaged. There is no showing by respondents that any of said price differences make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which said products were sold or delivered.

CONCLUSION

The aforesaid acts and practices of respondents in granting the discriminations in price as heretofore found constitute violations of subsection (a) 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, a stipulation as to the facts, and a supplemental stipulation as to the facts, both entered into by counsel for respondents and the chief trial counsel for the Commission, which stipulations provide, among other things, that without further evidence or other intervening procedure the Commission may proceed upon the complaint and said stipulations to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of this proceeding; and the Commission having made its findings as to the facts and conclusion that respondents have violated subsection (a) of section 2 of "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 act approved June 19, 1936 (the Robinson-Patman Act):

It is ordered, That respondents, Jacques Kreisler Manufacturing Corp., a corporation, and Jacques Kreisler and Tobias Stern as officers of the corporate respondent, their representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale and distribution of jewelry products in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

Directly or indirectly discriminating in price by charging, accepting, or receiving from different purchasers of jewelry products of like grade and quality net prices which differ as much as, or more than,

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21½ percent of the highest of such net prices; *Provided, however,* That the foregoing shall not be construed to prevent respondents from defending any alleged violation of this order by showing that different prices make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which the products were sold or delivered.

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.

Syllabus

IN THE MATTER OF

ADVANCE REALTY CORPORATION (FORMERLY CALIFORNIA SEAFOOD COMPANY, INC.), ITS OFFICERS AND DIRECTORS, ET AL.

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 APPROVED JUNE 19, 1936

Docket 5469. Complaint, Oct. 17, 1946—Decision, Aug. 11, 1948

In a proceeding in which certain individuals who had conducted their business for six years or more through certain corporate instrumentalities, and also through certain intervening corporate and partnership instrumentalities which had been discontinued, and in which said individuals and the surviving and active corporations, which they controlled, were charged with the violation of the provision of subsec. (c) of sec. 2 of the Clayton Act, as amended, the alleged abandonment of the illegal practices complained of by one of said corporations, through which and its subsidiaries said individuals conducted a very large and extensive business, did not constitute a valid argument for dispensing with further corrective action as not required by the public interest, since, even if true, such abandonment by said corporation of the illegal practices complained of, did not, in the circumstances recited, affect the Commission's duty to proceed in the manner prescribed by the statute.

Where certain corporations and individuals who controlled them, namely—

(a) Two corporations, engaged currently or formerly in the packing of seafood for interstate sale and distribution to and through brokers, intermediaries and otherwise; and

(b) A third corporation which (1) was engaged, directly or through controlled subsidiaries, in processing, canning, manufacturing, bottling, packing, freezing and selling an extensive line of food products, including fruits, vegetables, berries, frozen foods and specialties, (2) sold said products principally under its brand name, though to some extent under private and buyer's labels and brands, (3) employed about 10,000 persons during the peak season, along with about 1,000 permanent employees, (4) advertised extensively through trade journals, outdoor posters, magazines, newspapers and over the radio, (5) sold and distributed its merchandise through its salesmen who operated principally in the west and southwest, to buyers located throughout the whole country, (6) had net annual sales in excess of \$19,000,000, not including those of a subsidiary, amounting to nearly \$11,000,000, and (7) sold and distributed to buyers throughout the United States the aforesaid seafood; and

(c) Certain individuals and partners, who, as aforesaid, controlled said corporations, and, during the period concerned herein, carried on the business involved through the instrumentality thereof, and through the means also of certain other intervening and subsequently discontinued corporate and partnership operations;