

Complaint

IN THE MATTER OF

KRENGEL MANUFACTURING CO., INC., ABRAHAM L. GER-
SHON, GEORGE FELDMAN, AND SADYE GERSHON

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

Docket 5516. Complaint, Nov. 20, 1947—Decision, July 15, 1949

Where a corporation, and its three principal stockholders who were respectively its president, vice president, and secretary-treasurer, engaged in the competitive interstate sale and distribution of rubber stamps to dealers—generally retail stationers—and directly to consumers, including principally large firms such as oil companies, industrial corporations, telephone companies, department stores, railroad companies, and insurance companies—

Discriminated in price between different consumer purchasers of their products of like grade and quality by selling such products to some at higher prices than to others, not, it appeared, in good faith to meet an equally low price of a competitor nor on account of differences in cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such products were sold or delivered;

With the result that a competitor lost one very substantial account to them due to his inability to meet their low, discriminatory price, which did not permit the manufacture and sale of said products profitably; and that the effect of such discriminations had been and might be substantially to lessen, destroy, and prevent competition between them and their competitors in the sale and distribution in commerce of the products concerned;

Held, That such acts and practices, under the circumstances set forth, violated section 2 (a) of the Clayton Act as amended.

Before *Mr. Everett F. Haycraft*, trial examiner.

Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.

Mr. A. Aaron Raphael, 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 been and are 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, Krengel Manufacturing Co., Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 227 Fulton Street, New York, N. Y. Respondent corporation is engaged in

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the business of selling and distributing rubber stamps. The products distributed by respondents are sold, principally to dealers, generally retail stationers, and also directly to consumers. Respondent's sales of its rubber stamps directly to consumers are made principally to large firms such as oil companies, industrial corporations, telephone companies, department stores, railroad companies, and insurance companies. The complaint herein is directed solely to respondent's sales of rubber stamps to consumers.

PAR. 2. Respondent, Abraham L. Gershon, is an individual residing in New York, N. Y., and is one of the principal stockholders in said respondent corporation. He is now president of the Krengel Manufacturing Co., Inc., and has been an officer of said corporation since some time after June 19, 1936. After becoming an officer and at the present time and for some time past as president, respondent, Abraham L. Gershon, together with his wife, respondent, Sadye Gershon, and his son-in-law, respondent, George Feldman, has exercised and still exercises a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 3. Respondent, George Feldman, is an individual residing in New York, N. Y., and is one of the principal stockholders in said respondent corporation. He is now vice president of Krengel Manufacturing Co., Inc., and has been an officer of that corporation since some time after June 19, 1936. After becoming an officer and at the present time and for some time past as vice president, respondent George Feldman, together with respondent Abraham L. Gershon and respondent Sadye Gershon, has exercised and still exercises a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 4. Respondent, Sadye Gershon, is an individual residing in New York, N. Y., and is one of the principal stockholders in said respondent corporation. She is now secretary and treasurer of Krengel Manufacturing Co., Inc., and has been an officer of that corporation since some time after June 19, 1936. After becoming an officer and at the present time and for some time past as secretary and treasurer, respondent, Sadye Gershon, together with respondent, Abraham L. Gershon, and respondent, George Feldman, has exercised and still exercises a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 5. Respondents, Abraham L. Gershon, as president and George Feldman, as vice president and Sadye Gershon as secretary and treas-

urer of said respondent corporation, Krengel Manufacturing Co., Inc., are now engaged and for several years prior hereto have engaged in the business of processing, manufacturing, offering for sale, selling, and distributing rubber stamps for their own account. The individual respondents have and are now conducting said business through Krengel Manufacturing Co., Inc., said corporate respondent, which respondent has likewise engaged in said business for the past several years.

PAR. 6. Each of the individual respondents through said respondent corporation, and said respondent corporation, now sell and distribute, and since June 19, 1936, have sold and distributed rubber stamps to dealers and also direct to the consuming public. Some customers of respondents purchasing such products are located in States other than the State in which respondents' business is located, and some of respondents' customers, although located within the State in which respondents' business is located, direct that the shipments of their purchases of said rubber stamps be made by the respondents to their branch offices, some of which branch offices are located in States other than the State in which respondents' business is located, and in such cases, respondents cause such products to be shipped and transported across State lines from respondents' 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 respondents' factory and warehouse and the purchasers of said products, some of which are located in States other than the State in which respondents' business is located as aforesaid. Said products are sold and distributed for use within the various States of the United States.

PAR. 7. In the course and conduct of each of the respondents' business in commerce as aforesaid, respondents since June 19, 1936, have been and are now in substantial competition with other corporations, partnerships, individuals and firms engaged in the business of processing, manufacturing, offering for sale, selling, and distributing rubber stamps.

PAR. 8. In the course and conduct of the business of each respondent, as aforesaid, respondents since June 19, 1936, have been and are 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 respondents sell similar products of like grade and quality to other of their customers. Such discrimi-

nations in price relate only to the respondents' sales of rubber stamps to consumers. Respondents' sales made to dealer are not involved herein.

PAR. 9. The effect of each of the respondents' discriminations in price, hereinbefore set-out, has been and may be substantially to lessen competition and to injure, destroy, and prevent competition between respondents and their 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. 10. The foregoing acts and practices of the respondents; namely, Krengel Manufacturing Co., Inc., a corporation, Abraham L. Gershon, as president, and George Feldman, as vice president, and Sadye Gershon, as secretary and treasurer, of the Krengel Manufacturing Co., Inc., since June 19, 1936, 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 on November 20, 1947, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of subsection (a) of section 2 of that act, as amended. After the filing by respondents of their answer to the complaint, testimony and other evidence in support of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered on behalf of respondents). Subsequently, the matter regularly came on for final consideration by the Commission upon the complaint, answer, testimony, and other evidence and recommended decision of the trial examiner (no briefs having been submitted by counsel and oral argument not having been requested), 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, Krengel Manufacturing Co., Inc., is a corporation organized and existing under the laws of the State of

New York, with its principal office and place of business located at 227 Fulton Street, New York, N. Y. Respondents, Abraham L. Gershon, George Feldman, and Sadye Gershon, are individuals residing in New York, N. Y., and are, respectively, president, vice president, and secretary-treasurer of the respondent corporation. Each of these individuals is one of the principal stockholders in the corporation and each has exercised and still exercises a substantial degree of authority and control over the corporation, including the direction of its distribution and sales policies.

PAR. 2. Respondents are and for several years last past have been engaged in the business of manufacturing and selling rubber stamps. These stamps are sold by respondents principally to dealers, generally retail stationers, and also directly to consumers, such consumers being principally large firms such as oil companies, industrial corporations, telephone companies, department stores, railroad companies, and insurance companies. The present proceeding involves only sales made by respondent to consumers.

PAR. 3. In the course and conduct of their business respondents cause and have caused their products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in their products in commerce among and between the various States of the United States.

PAR. 4. Respondents are and at all times mentioned herein have been in substantial competition with other corporations and individuals and with firms and partnerships engaged in the manufacturing of rubber stamps and in the sale of such stamps in commerce among and between the various States of the United States.

PAR. 5. In the course and conduct of their business as aforesaid, respondents, since June 19, 1936, have been and are now discriminating in price between different purchasers of their products of like grade and quality by selling such products to some of such purchasers at higher prices than the prices at which respondents sell similar products of like grade and quality to other of such purchasers. Such products were and are sold by respondents for use within the United States.

PAR. 6. There is no evidence that the lower prices so charged by respondents to some of their customers were made in good faith to meet an equally low price of a competitor. Nor is there any evidence that such differences in price were based upon differences in cost of

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manufacture, sale, or delivery resulting from the differing methods or quantities in which such products were sold or delivered.

PAR. 7. With respect to the effect of respondents' discriminatory prices on competition, the record discloses that one very substantial account was practically lost to respondents by one of their competitors because of such competitor's inability to meet respondents' low, discriminatory prices. In addition to this specific instance, there is testimony from three other competitors of respondents to the effect that it was not possible to manufacture and sell rubber stamps profitably at the discriminatory prices granted by respondents to their favored customers. The evidence further shows that price is one of the principal factors governing purchases of rubber stamps. The Commission therefore concludes and finds that the effect of respondents' discriminations in price has been and may be substantially to lessen, destroy, and prevent competition between respondents and their competitors in the sale and distribution of rubber stamps in commerce as aforesaid.

CONCLUSION

The acts and practices of respondents as herein found are violative 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, the answer of respondents, testimony, and other evidence in support of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it (no evidence having been offered on behalf of respondents) and the recommended decision of the trial examiner (no briefs having been filed by counsel and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that respondents have violated 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 respondent, Krengel Manufacturing Co., Inc., a corporation, and its officers, and respondents, Abraham L. Gershon, George Feldman, and Sadye Gershon, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in the sale

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of rubber stamps in commerce, as "commerce" is defined in the afore-said Clayton Act, do forthwith cease and desist from:

1. Directly or indirectly discriminating in the price of rubber stamps of comparable size and of like grade and quality by selling such rubber stamps to any purchaser at a price or prices materially different from those at which sales of similar rubber stamps of comparable size and of like grade and quality are sold to any other purchaser.

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 said Clayton Act as amended.

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.

IN THE MATTER OF

WALSH REFRACTORIES CORP.

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

Docket 5269. Complaint, June 7, 1945¹—Decision, July 19, 1945²

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of refractory products, including its "Walsh Ref. Corp. Mullitex" firebrick; in circulars disseminated throughout the United States—
Represented directly and by implication through use of the term "Super Refractory" that its said firebrick possessed the qualities of a product known in the refractory industry as "super-refractory"; when in fact its said product was not a super-refractory, as now understood in the industry, but was a "super-duty refractory";

With tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that said representation was true and to induce a substantial number thereof to purchase its said "Mullitex" fire brick:
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. Andrew B. Duvall* and *Mr. Randolph Preston*, trial examiners.

Mr. Clark Nichols for the Commission.

Mr. T. M. Pierce, *Mr. A. M. Menzi* and *Bruninga & Sutherland*, of St. Louis, Mo., for respondent.

¹ Amended.

² The Commission on November 26, 1948, issued an order granting in part motion to dismiss complaint, as follows:

"This matter came on to be heard in regular course upon respondent's motion of February 19, 1948, for leave to file petition for reconsideration; said petition for reconsideration by the Commission of its order of January 15, 1948; the answer to said petition filed on March 3, 1948, by counsel supporting the complaint; brief in support of the petition for reconsideration filed July 22, 1948, pursuant to leave granted; and memorandum reply brief filed August 23, 1948, by counsel supporting the complaint.

"Respondent's major contention is that the Commission erred in sustaining the view of the trial examiner that a *prima facie* case had been made out in support of the charge of the complaint that the designation 'Mullitex' as applied to respondent's firebrick was false and misleading. This point has been briefed by respondent in detail. After consideration of all the testimony and other evidence taken in the proceeding, it appears that there is no established or generally recognized standard of mullite content for 'mullite' or 'mullite type' brick, and that the brick designated by respondent as 'Mullitex' contain substantial proportions of mullite (the record indicates a theoretical maximum of slightly more than 55 percent mullite and a practical probability of approximately 45 percent). There is no showing that 'Mullitex,' when not joined with the term 'super-refractory' or other word or term of similar meaning, is likely to mislead or deceive. In these circumstances, and upon reconsideration of respondent's motion to dismiss the complaint:

"*It is ordered*, That the charge in the complaint in this proceeding respecting the term 'Mullitex' as applied to respondent's firebrick be, and the same hereby is, dismissed."