

Complaint

IN THE MATTER OF
TRIFARI, KRUSSMAN & FISHEL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 2(d) OF THE CLAYTON ACT

Docket 7119. Complaint, Apr. 10, 1958—Decision, Sept. 23, 1958

Consent order requiring a manufacturer of costume jewelry products in Providence, R.I., to cease making payments as compensation for such services as newspaper advertising furnished in connection with the resale of its products, to the corporate operator of a chain of five retail jewelry stores in and around Philadelphia and one in Norfolk, and which purchased also for four other retail stores, without making proportional payments to its competitors; and requiring said corporate buyer to cease inducing or receiving such compensation from its supplier for advertising or other services.

COMPLAINT

The Federal Trade Commission, having reason to believe that Trifari, Krussman & Fischel, Inc., a corporation, has violated and is 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, and the Commission having further reason to believe that Associated Barr Stores, Inc., a corporation, and Myer B. Barr, as an individual, and as president of Associated Barr Stores, Inc., have violated, and are now violating the provisions of Section 5 of the Federal Trade Commission 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 with respect thereto as follows:

Count I.

PARAGRAPH 1. Respondent Trifari, Krussman & Fischel, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office located at 16 East 40th Street, New York, N.Y.

PAR. 2. Respondent Trifari, Krussman & Fischel, Inc., is engaged in the business of manufacturing, distributing, and selling costume jewelry products. Said respondent sells the costume jewelry products, which it manufactures at its factory located in Providence, Rhode Island, to a large number of purchasers located throughout the various states of the United States and other places under the jurisdiction of the United States for use, consumption,

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or resale therein. Said respondent sells substantially all of its products directly to retail stores, which in turn sell to the consuming public. Said respondent is a major producer of costume jewelry in the United States with sales in excess of \$8,000,000 for the year 1955.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent Trifari, Krussman & Fischel, Inc., is now engaged, and for many years has been engaged in commerce as "commerce" is defined in the Clayton Act, as amended, having sold and distributed its costume jewelry manufactured in its factory at Providence, Rhode Island, and transported or caused the same to be transported from its place of business in Rhode Island to purchasers located in other States of the United States and other places under the jurisdiction of the United States in a constant current of commerce.

PAR. 4. Respondent Associated Barr Stores, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 1112-1114 Chestnut Street, Philadelphia, Pa.

PAR. 5. Respondent Associated Barr Stores, Inc., is now and for many years has been engaged in the operation of a chain of retail jewelry stores selling jewelry and a variety of other products to the consuming public. Said respondent operates six retail jewelry stores in and around Philadelphia, Pa., and one retail jewelry store in Norfolk, Va.

Respondent Associated Barr Stores, Inc., is affiliated with four other corporations, all of which are engaged in the retail jewelry business in the Delaware Valley area of Pennsylvania and New Jersey. It is the practice of said respondent to purchase the merchandise requirements for all these affiliates as well as for its own requirements. These affiliates are: Barr's Jewelers, located in Camden N.J.; Barr's Inc., located in Chester, Pa.; Gemcraft, Inc., located in and around Philadelphia, Pa.; and Gemcraft of New Jersey, Inc., located in and around Camden, N.J. For brevity these affiliates will hereinafter sometimes be referred to as affiliated corporations. In addition to acting as buyer for said affiliated corporations, respondent Associated Barr Stores, Inc., also handles substantially all advertising, including that of the products of respondent Trifari, Krussman & Fischel, Inc., sold in the stores of said affiliated corporations.

Sales made by respondent Associated Barr Stores, Inc., are

substantial, being approximately \$2,140,000 for the fiscal year ending June 30, 1955.

PAR. 6. Respondent Myer B. Barr, an individual, is president of respondent Associated Barr Stores, Inc., and personally directs and supervises its policies and operations. Substantially all the stock of respondent Associated Barr Stores, Inc., and its affiliated corporations, as hereinabove set out, is owned by the said Myer B. Barr and individual members of his family. The acts and practices of respondent Associated Barr Stores, Inc., as described herein have been and are now under the direct personal supervision of the said Myer B. Barr.

PAR. 7. In the course and conduct of its business in commerce as set forth in paragraphs 2 and 3 above, and more specifically during the years 1955 and 1956, respondent Trifari, Krussman & Fischel, Inc., has sold and distributed substantial quantities of its costume jewelry to a number of retail jewelry stores in Philadelphia and Chester, Pa., Norfolk, Va., and Camden, N.J., including respondent Associated Barr Stores, Inc., and its affiliated corporations. Respondent Trifari, Krussman & Fischel, Inc., has transported such products or caused the same to be transported from said respondent's factory in Rhode Island or from other places located outside the Commonwealths of Pennsylvania and Virginia and the State of New Jersey to such retailer customers, including respondent Associated Barr Stores, Inc., and its affiliated corporations located in the cities of Philadelphia and Chester, Pa., Camden, N.J., and Norfolk, Va.

PAR. 8. In the course and conduct of its business as aforesaid, respondent Associated Barr Stores, Inc., and its affiliated corporations are now and for many years have been in competition with other corporations, partnerships, firms, and individuals located in the cities of Philadelphia and Chester, Pa., Camden, N.J., and Norfolk, Va., who are also engaged in the selling at retail of costume jewelry manufactured, sold, and distributed by respondent Trifari, Krussman & Fischel, Inc.

PAR. 9. In the course and conduct of its business in commerce, as aforesaid, and more specifically within the years 1955 and 1956, respondent Trifari, Krussman & Fischel, Inc., has paid or contracted for the payment of money, goods, or other things of value to or for the benefit of respondent Associated Barr Stores, Inc., and affiliated corporations as compensation or in consideration for services or facilities, including newspaper advertising, furnished or agreed to be furnished by or through respondent

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Associated Barr Stores, Inc., and affiliated corporations in connection with the handling, sale, or offering for sale by respondent Associated Barr Stores, Inc., and its affiliated corporations of the costume jewelry manufactured, sold, and distributed by respondent Trifari, Krussman & Fischel, Inc.; and respondent Trifari, Krussman & Fischel, Inc., has not made or contracted to make, or authorized such payments, allowances, or consideration available on proportionally equal terms to all other customers competing with respondent Associated Barr Stores, Inc., and affiliated corporations in the handling, selling or offering for sale of the costume jewelry manufactured, sold, and distributed by respondent Trifari, Krussman & Fischel, Inc.

PAR. 10. The acts and practices of respondent Trifari, Krussman & Fischel, Inc., as alleged in paragraph 9 above, are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended.

Count II

PAR. 11. Paragraphs 1 through 10 of count 1 hereof are hereby set forth by reference and made a part of this count as fully and with the same effect as if quoted here verbatim.

PAR. 12. In the course and conduct of their business as aforesaid, and more specifically during the years 1955 and 1956, respondents Associated Barr Stores, Inc., and Myer B. Barr knowingly induced and received and knowingly contracted for the payment of money, goods, or other things of value to the said respondents and to the affiliated corporations of respondent Associated Barr Stores, Inc., and for the benefit of said respondents and said affiliated corporations from respondent Trifari, Krussman & Fischel, Inc., as compensation or in consideration for services or facilities furnished by or through said respondent Associated Barr Stores, Inc., and affiliated corporations in connection with the offering for sale or sale by said respondent and affiliated corporations of the costume jewelry sold and distributed by respondent Trifari, Krussman & Fischel, Inc., in the course of interstate commerce, which payments or considerations said respondents Associated Barr Stores, Inc., and Myer B. Barr knew or should have known were not made available on proportionally equal terms to all other customers of respondent Trifari, Krussman & Fischel, Inc., competing with said respondent Associated Barr Stores, Inc., and affiliated corporations in the retail sale of respondent Trifari, Krussman & Fischel, Inc.'s costume jewelry.

PAR. 13. As illustrative of the acts and practices alleged in paragraph 12 herein, respondents Associated Barr Stores, Inc., and Myer B. Barr, among other similar transactions, induced, solicited, and received from respondent Trifari, Krussman & Fischel, Inc., a \$1,225 contribution toward a page of advertising featuring respondent Trifari, Krussman & Fischel, Inc.'s costume jewelry and also publicizing respondent Associated Barr Stores, Inc.'s retail stores and the stores of its affiliated corporations in a special rotogravure insert section of the December 4, 1955, edition of the Philadelphia Inquirer, a newspaper published in Philadelphia, Pa. In soliciting said contribution respondents Associated Barr Stores, Inc., and Myer B. Barr informed respondent Trifari, Krussman & Fischel, Inc., that this particular advertisement was entirely separate and distinct from any cooperative program arrangements respondents Associated Barr Stores, Inc., or Myer B. Barr had at that time with respondent Trifari, Krussman & Fischel, Inc., and was to be considered only on that basis.

In inducing and receiving payment for this advertisement respondents Associated Barr Stores, Inc., and Myer B. Barr knew or should have known that they were receiving a payment or consideration from respondent Trifari, Krussman & Fischel, Inc., that was not offered or made available on proportionally equal terms to all other customers of respondent Trifari, Krussman & Fischel, Inc., competing with respondents Associated Barr Stores, Inc., and Myer B. Barr and their affiliated corporations in the sale at retail of the costume jewelry of respondent Trifari, Krussman & Fischel, Inc.

PAR. 14. The circulation of the Philadelphia Inquirer, referred to in paragraph 13 above is not limited to the Commonwealth of Pennsylvania, in which said newspaper is published, but also includes a substantial circulation in a number of other States of the United States.

PAR. 15. The acts and practices of respondents Associated Barr Stores, Inc., and Myer B. Barr as herein alleged are part of an extensive advertising program undertaken by said respondents in conjunction with a large number of suppliers. As a result of this program said respondents have achieved and continue to maintain a dominant position with regard to advertising on the part of retail jewelers in the market areas in which said respondents are engaged. Such acts and practices enabled said respondents in 1954 to place more advertising space in the three leading

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newspapers circulated in Philadelphia, Pa., than all other jewelers competing with said respondents combined.

PAR. 16. The methods, acts, and practices of respondents Associated Barr Stores, Inc., and Myer B. Barr, including the inducing and receiving of payments for the advertisement of the products of respondent Trifari, Krussman & Fischel, Inc., and the advertisement in the Philadelphia Inquirer of such products offered for sale and sold in the stores of respondent Associated Barr Stores, Inc., and affiliated corporations, knowing that said payments were not made available on proportionally equal terms to all other customers competing with respondent Associated Barr Stores, Inc., and affiliated corporations, as hereinbefore alleged, are methods, acts, and practices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 17. The methods, acts and practices of respondents Associated Barr Stores, Inc., and Myer B. Barr, as alleged in Count II hereof, of knowingly inducing and receiving payments or allowances from respondent Trifari, Krussman & Fischel, Inc., that said respondents knew or should have known were made by respondents Trifari, Krussman & Fischel, Inc., in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as alleged in Count I hereof, are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

Mr. William H. Smith and Mr. James R. Fruchterman for the Commission.

Sullivan, Donovan, Hanrahan, McGovern & Lane, by *Mr. William H. Coogan*, of New York, N.Y., for Trifari, Krussman & Fishel, Inc.; *Abrahams & Loewenstein*, by *Mr. Maurice J. Klein*, of Philadelphia, Pa., for Associated Barr Stores, Inc., and Myer B. Barr.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on April 10, 1958. Count I thereof alleges that respondent Trifari, Krussman & Fishel, Inc. (the name Fishel having been incorrectly spelled in the complaint as Fischel) is a major producer of costume jewelry in the United States, with sales, during the year 1955, in excess of eight million dollars. Said respondent is charged with violating

§2(d) of the Clayton Act as amended, by making payments or allowances, during the years 1955 and 1956, to, or for the benefit of, respondent Associated Barr Stores, Inc., and its affiliated corporations, as compensation or in consideration for services or facilities furnished by or through respondent Associated Barr Stores, Inc., including newspaper advertisements of costume jewelry manufactured by respondent Trifari, Krussman & Fishel, Inc., which payments or allowances were not made available on proportionally equal terms to all others of respondent Trifari's customers competing with respondent Associated Barr Stores, Inc.

Count II of the complaint charges respondent Associated Barr Stores, Inc., and its president, respondent Myer B. Barr, with unfair methods of competition and unfair acts and practices in commerce in violation of §5 of the Federal Trade Commission Act, by soliciting and receiving such unlawful payments and allowances, which "they knew or should have known" were not being offered on proportionally equal terms to all those of their competitors who were also customers of respondent Trifari.

On July 1, 1958, respondent Trifari, Krussman & Fishel, Inc., their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order to Cease and Desist, and on July 23, 1958, respondents Associated Barr Stores, Inc., and Myer B. Barr, their counsel, and counsel supporting the complaint entered into a similar agreement. Both agreements were approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The first agreement identifies respondent Trifari, Krussman & Fishel, Inc., as a New York corporation, with its office and principal place of business located at 16 East 40th Street, New York, N.Y. The second agreement identifies respondent Associated Barr Stores, Inc., as a Delaware corporation, having its principal office and place of business at 1112-1114 Chestnut Street, Philadelphia, Pa., and individual respondent Myer B. Barr as president thereof, and having the same address.

In both agreements, respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact

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and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and each agreement as to the parties signatory thereto; that the order to cease and desist, as contained in each agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, the provisions of the two agreements, each as to the parties signatory thereto, and the proposed orders, the hearing examiner is of the opinion that such orders constitute a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreements, the hearing examiner accepts the two Agreements Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondent Trifari, Krussman & Fishel, Inc., its officers, employees, agents, and representatives, directly or through any corporate or other device in connection with the sale of costume jewelry in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of Associated Barr Stores, Inc., or any other customer, any payment of anything of value as compensation or in consideration for advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of the respondent's products, unless such payment is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

It is further ordered, That respondent Associated Barr Stores, Inc., a corporation, its officers, and Myer B. Barr, an individual,

and their respective representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of jewelry or other products, do forthwith cease and desist from:

Knowingly inducing, receiving, or contracting for the receipt of, the payment of anything of value from any supplier as compensation or in consideration for advertising or other services or facilities furnished by or through the corporate respondent, its affiliates, subsidiaries, or successors, in connection with the handling, offering for resale, or resale by said corporate respondent, its affiliates, subsidiaries, or successors, of said products, when such payment or other consideration is not made available by such supplier on proportionally equal terms to all other customers competing with said corporate respondent, its affiliates, subsidiaries, or successors in the sale or distribution of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23d day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Trifari, Krussman & Fishel, Inc. (the name Fishel erroneously shown in the complaint as Fischel), Associated Barr Stores, Inc., and Myer B. Barr, as an individual and as president of Associated Barr Stores, Inc., shall, within sixty (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.

IN THE MATTER OF
STANLEY LIEBERMAN ET AL.
TRADING AS WM. DEVITZ & CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 7138. Complaint, May 7, 1958—Decision, Sept. 23, 1958

Consent order requiring a furrier in New York City to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements.

Mr. John T. Walker, supporting the complaint.

Mr. Carl Schaeffer of the firm of *Schaeffer & Goldstein*, for respondents, New York, N.Y.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 7, 1958, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by misbranding and falsely and deceptively invoicing certain of their fur products.

After being served with the complaint respondents entered into an agreement, dated July 14, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the assistant director and the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall