

Complaint

IN THE MATTER OF
KEYSTONE MANUFACTURING COMPANY, INC., ET AL.

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

Docket 7118. Complaint, Apr. 10, 1958—Decision, Dec. 18, 1958

Consent order requiring a large Philadelphia jewelry chain which acted as buyer also for several affiliated stores, to cease violating the Federal Trade Commission Act by knowingly inducing and receiving discriminatory advertising allowances from respondents' suppliers in connection with the sale of the latter's home movie equipment, slide projectors, and related items; specifically inducing said suppliers to grant reimbursements in amounts in excess of the 5% of the amount of purchases and of 50% of the cost of a given advertisement allowed customers generally.

The matter as to Keystone supplier respondents was settled by consent order Mar. 5, 1959, p. 1391, herein.

COMPLAINT

The Federal Trade Commission, having reason to believe that Keystone Manufacturing Company, Inc., a corporation, and Keystone Camera Company, Inc., a corporation, have violated and are now violating the provisions of subsection (d) 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. Respondents Keystone Manufacturing Company, Inc., and Keystone Camera Company, Inc., hereinafter sometimes referred to as respondents Keystone Companies, are corporations organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with their principal offices and places of business located at Hallet Square, Boston 24, Mass.

PAR. 2. Respondent Keystone Manufacturing Company, Inc.,

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is engaged in the business of manufacturing home movie equipment, slide projectors, and related items at its factory located in the Commonwealth of Massachusetts.

Respondent Keystone Camera Company, Inc., is engaged in the business of distributing and selling home movie equipment, slide projectors, and related items manufactured by and supplied to it by respondent Keystone Manufacturing Company, Inc.

Respondent Keystone Camera Company, Inc., is a wholly owned subsidiary of respondent Keystone Manufacturing Company, Inc. Said respondent is an instrumentality of its parent in that its only functions are the distribution and sale of products manufactured by its parent corporation and activities incidental to those functions.

Respondents Keystone Manufacturing Company, Inc., and Keystone Camera Company, Inc., operate as one integrated business enterprise rather than as two distinct establishments.

Sales made by respondents Keystone Companies are substantial, being in excess of \$10,000,000 for the year 1955.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents Keystone Companies are now engaged, and for many years have been engaged in commerce as "commerce" is defined in the Clayton Act, as amended, having sold and distributed their home movie equipment, slide projectors, and related items manufactured in their factory in Massachusetts and caused the same to be transported from their place of business in Massachusetts 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, including movie equipment, slide projectors, and related items 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 respondents Keystone Companies, 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 hereinbefore 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 now are 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, 1956, and 1957, respondents Keystone Companies have sold and distributed substantial quantities of their home movie equipment, slide projectors, and related items to a number of retail dealers in such products in Philadelphia and Chester, Pa., Norfolk, Va., and Camden, N. J., including respondent Associated Barr Stores, Inc., and affiliated corporations. Respondents Keystone Companies have transported such products or caused the same to be transported from said respondents' factory in Massachusetts 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.

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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 and around the cities of Philadelphia and Chester, Pa., Camden, N.J., and Norfolk, Va., who are also engaged in the selling at retail of home movie equipment, slide projectors, and related items manufactured, sold, and distributed by respondents Keystone Companies.

PAR. 9. In the course and conduct of their business, as aforesaid, and more specifically within the years 1955, 1956, and 1957, respondents Keystone Companies have 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 Associated Barr Stores, Inc., and affiliated corporations in connection with the handling, sale, or offering for sale by respondent Associated Barr Stores, Inc., and affiliated corporations of the home movie equipment, slide projectors, and related items manufactured, sold, and distributed by respondents Keystone Companies, and respondents Keystone Companies have not made available or contracted to make available, or authorized such payments, allowances, or considerations 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 home movie equipment, slide projectors, and related items manufactured, sold, and distributed by respondents Keystone Companies.

PAR. 10. The acts and practices of respondents Keystone Companies, 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 I 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, 1956, and 1957, respondents Associated Barr Stores, Inc., and Myer B. Barr know-

ingly 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 respondents Keystone Companies 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 home movie equipment, slide projectors, and related items manufactured, sold, and distributed by respondents Keystone Companies in the course of interstate commerce, which payments or considerations 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 respondents Keystone Companies competing with said respondent Associated Barr Stores, Inc., and affiliated corporations in the retail sale of respondents Keystone Companies' home movie equipment, slide projectors, and related items.

PAR. 13. As illustrative of the acts and practices alleged in paragraph 12 herein, although respondents Associated Barr Stores, Inc., and Myer B. Barr, knew or should have known that during the years 1955, 1956, and 1957 all other corporations, partnerships, firms, or individuals competing with said respondents in the sale or offering for sale of the home movie equipment, slide projectors, and related items of the respondents Keystone Companies were limited by said respondents Keystone Companies with regard to the extent to which they would be reimbursed or compensated for newspaper advertising undertaken in connection with said respondents Keystone Companies in the advertising of said respondents Keystone Companies' products, to an amount of money or other things of value not in excess of 5% of the amount of their purchases from respondents Keystone Companies for a given period of time, and also not in excess of 50% of the cost of any given advertisement; nevertheless respondents Associated Barr Stores, Inc., and Myer B. Barr knowingly induced respondents Keystone Companies to grant reimbursement or compensation to them in amounts in excess of both the above stated limits with regard to newspaper advertising undertaken by them in connection with the sale or offering for sale of the products of respondents Keystone Companies on numerous occasions during the years 1955, 1956, and 1957.

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PAR. 14. On numerous occasions during the years 1955, 1956, and 1957 respondents Associated Barr Stores, Inc., and Myer B. Barr placed advertisements, including certain of those referred to in paragraph 13 herein, in newspapers the circulations of which were not limited to the States or States of the United States in which such newspapers were published but had in addition thereto substantial circulation in one or more States outside the State of publication.

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 retailers 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 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 advertising of the products of respondents Keystone Companies and the advertising in interstate media of such products offered for sale and sold in the stores of respondent Associated Barr Stores, Inc., and affiliated corporations, knowing that such 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 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 respondents Keystone Companies that respondents Associated Barr Stores, Inc., and Myer B. Barr knew or should have known were made by respondents Keystone Companies 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.

Abrahams & Loewenstein, by Mr. Maurice J. Klein, of Philadelphia, Pa., for Associated Barr Stores, Inc., and Myer B. Barr.

INITIAL DECISION AS TO THE RESPONDENTS ASSOCIATED
BARR STORES, INC., AND MYER B. BARR BY
ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on April 10, 1958. Count I thereof alleges that respondent Keystone Manufacturing Company, Inc., and its wholly owned subsidiary, respondent Keystone Camera Company, Inc., are engaged in the business of manufacturing, distributing and selling home movie equipment, slide projectors, and related items, operating as one integrated business enterprise rather than as two distinct establishments, their sales during the year 1955 having been in excess of ten million dollars. Said respondents are charged with violating §2(d) of the Clayton Act as amended, by paying or contracting for the payment of money, goods or other things of value, during the years 1955, 1956 and 1957, 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 or agreed to be furnished by or through respondent Associated Barr Stores, Inc., including newspaper advertising, in connection with the handling, sale, or offering for sale by respondent Associated Barr Stores, Inc., and its affiliated corporations of the home movie equipment, slide projectors, and related items manufactured, sold, and distributed by respondents Keystone Companies, which payments, allowances or considerations were not made available on proportionally equal terms to all of respondent Keystone Companies' other 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 knowingly inducing, receiving and contracting for such unlawful payments, allowances or consideration, which they "knew

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or should have known" were not being offered on proportionally equal terms to all those of their competitors who were also customers of respondents Keystone Companies.

On July 23, 1958, respondents Associated Barr Stores, Inc., and Myer B. Barr, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order to Cease and Desist, which was 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 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 respondent Myer B. Barr as an individual and president of said corporate respondent, and having the same address.

Respondents signatory to the agreement admit all of 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 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 signatory to the agreement 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 said agreement; that the order to cease and desist, as contained in the 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 respondents signatory thereto that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, the provisions of the agreement, and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding as to respondents Associated Barr Stores, Inc., and Myer B. Barr. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Or-

der to Cease and Desist; finds that the Commission has jurisdiction over the said 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 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 AS TO RESPONDENTS
ASSOCIATED BARR STORES, INC., AND MYER B. BARR

Pursuant to the provisions of §3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision, filed October 31, 1958, wherein the hearing examiner accepted an agreement containing a consent order, theretofore executed by the respondents, Associated Barr Stores, Inc., and Myer B. Barr, and counsel in support of the complaint, and entered his order to cease and desist in conformity with said agreement, shall, on the 18th day of December 1958, become the decision of the Commission; and accordingly

It is ordered, That the respondents, Associated Barr Stores, Inc., a corporation, and Myer B. Barr, 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 contained in said initial decision.

IN THE MATTER OF
PERFECT WOOL BATTING CO., INC., ET AL.

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

Docket 7218. Complaint, Aug. 4, 1958—Decision, Dec. 18, 1958

Consent order requiring manufacturers in the Bronx, N.Y., to cease violating the Wool Products Labeling Act by tagging and invoicing as "95% Reprocessed Wool, 5% Other Fibers," "70% Reprocessed Wool, 30% Man Made Fibers," "80% Reused Wool, 20% Reused Unknown Fibers," etc., battings which contained substantially less than the stated quantities of woolen fibers; and by failing to comply with the labeling requirements of the Act.

John T. Walker, Esq., for the Commission.

Joseph J. Nesis, Esq., of New York, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 4, 1958, charging them with having violated the Wool Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding and falsely representing their battings or other wool products. Respondents appeared by counsel and entered into an agreement, dated October 14, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by 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 §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 agree-