

Complaint

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

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

Docket 7118. Complaint, Apr. 10, 1958—Decision, Mar. 5, 1959

Consent order requiring manufacturers of home movie equipment, slide projectors, and related items, with sales in 1955 in excess of \$10,000,000, to cease paying special allowances to a large Pennsylvania jewelry chain for advertising their products while not making such allowances available on proportionally equal terms to competitors of the chain.

Count II of the complaint charging said jewelry chain with knowingly inducing and receiving the allowances in question was settled by a consent order on Dec. 18, 1958, p. 885, 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) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 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., is engaged in the business of manufacturing home movie equip-

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ment, 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.

PAR. 8. In the course and conduct of its business as aforesaid,

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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 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 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 state 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

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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.

Mintz, Levin & Cohn, by Mr. Haskell Cohn, of Boston, Mass., for respondents.

INITIAL DECISION AS TO RESPONDENTS KEYSTONE
MFG. CO. AND KEYSTONE CAMERA COMPANY, INC.,
BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on April 10, 1958. Count I thereof alleges that respondent Keystone Mfg. Co. (erroneously referred to therein as Keystone Manufacturing Company, Inc.) and its wholly owned subsidiary, respondent Keystone Camera Company, Inc., hereinafter, together, referred to as respondents Keystone Companies, 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 respondents Keystone Companies' other customers competing with respondent Associated Barr Stores, Inc.

Count II of the complaint, charging unfair methods of competition and unfair acts and practices in commerce in violation of §5 of the Federal Trade Commission Act against respondents Associated Barr Stores, Inc., and Myer B. Barr, relates only to these respondents, with whom this decision is not concerned.

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On December 12, 1958, respondents Keystone Companies, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the acting director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondents Keystone Companies as corporations existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with their office and principal place of business located at Hallet Square, Boston, Mass.

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 Keystone Companies. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order 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 respondents Keystone Mfg. Co. and Keystone Camera Company, Inc., their officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the sale of home movie equipment, slide projectors, and related items in commerce, as "commerce" is defined in the Clayton Act as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to or for the benefit of Associated Barr Stores, Inc., or any other customer, as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the offering for sale, sale, or distribution of respondents' products unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision as to respondents, Keystone Mfg. Co. and Keystone Camera Company, Inc., filed January 19, 1959, wherein the hearing examiner accepted an agreement containing a consent order, theretofore executed by said respondents and counsel in support of the complaint, and entered his order to cease and desist in conformity with the agreement; and

It appearing that said initial decision is appropriate in all respects to dispose of this proceeding as to the respondents named therein:

It is ordered, That the hearing examiner's initial decision as to respondents, Keystone Mfg. Co. and Keystone Camera Company, Inc., filed October 31, 1958, be, and it hereby is, vacated and set aside.

It is further ordered, That the initial decision as to said respondents, filed January 19, 1959, shall, on the 5th day of March 1959, become the decision of the Commission.

It is further ordered, That the respondents, Keystone Mfg. Co. and Keystone Camera Company, 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 contained in the aforesaid initial decision.

IN THE MATTER OF
CRAWFORD CLOTHES, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7169. Complaint, June 6, 1958—Decision, Mar. 6, 1959

Consent order requiring a large men's and boys' clothing chain with main office in Long Island City, N.Y., to cease advertising falsely that fictitiously high amounts were its regular prices for clothing offered and that purchasers would save the difference between the higher and lower prices.

Mr. Charles W. O'Connell for the Commission.

Mr. Hyman Fried, of New York, N.Y., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 6, 1958, issued and subsequently served its complaint in this proceeding against respondent Crawford Clothes, Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York.

After one hearing at which considerable evidence in support of the complaint was introduced in the record, there was submitted to the undersigned hearing examiner, on January 21, 1959, an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that