

Complaint

IN THE MATTER OF

ROBERT CARP, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1023. Complaint, Dec. 16, 1965—Decision, Dec. 16, 1965*

Consent order requiring a nonprofit membership corporation located in New York City and its constituent members in the retail jewelry business, to cease knowingly inducing and receiving discriminatory payments for any service, facility or advertising when such payments are not made available on proportionally equal terms to competing retailers.

COMPLAINT

The Federal Trade Commission has reason to believe that the respondents named in the caption hereof have been and are now engaging in unfair acts and practices in commerce and in an unfair method of competition in violation of the provisions of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45); and therefore, it issues this complaint, stating its charges in that respect as follows:

I

THE RESPONDENTS

1. Respondent Robert Carp, 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 630 Fifth Avenue, New York, New York.

2. Respondent Robert Carp is an individual, and his address is the same as that of respondent Robert Carp, Inc. Said individual respondent formulates, directs and controls the acts, practices and policies of said corporate respondent. Said individual respondent caused said corporate respondent to be organized for the purpose of conducting, in corporate form, the business he had formerly conducted as a sole proprietorship.

3. Respondent National Jewelers Group, Inc., is a nonprofit membership corporation organized and existing under the laws of the State of New York, and its address is the same as that of respondent Robert Carp, Inc.

4. The following respondents (hereinafter referred to collectively as the "NJG members") are members of respondent National Jewelers Group, Inc.:

i. Coleman E. Adler & Sons, Inc., a corporation organized and

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existing under the laws of the State of Louisiana, with its principal office and place of business located at 722-24 Canal Street, New Orleans 12, Louisiana.

ii. Claude S. Bennett, Inc., a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business located at 207 Peachtree Street, N.E., Atlanta 3, Georgia.

iii. Bromberg & Company, Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 123 North Twentieth Street, Birmingham 3, Alabama.

iv. Carroll's Jewelers, Inc., a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at 365 Miracle Mile, Miami 34 (Coral Gables), Florida.

v. B. C. Clark, Inc., a corporation organized and existing under the laws of the State of Oklahoma, with its principal office and place of business located at 113 North Harvey, Oklahoma City, Oklahoma.

vi. Cornell Group Service Corporation, a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 53 Water Street, Newburgh, New York.

vii. Rudolph Deutsch Co., a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 1421 Euclid Avenue, Cleveland 15, Ohio.

viii. George R. Dodson, Inc., a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at West 517 Riverside Street, Spokane, Washington.

ix. Arthur A. Everts Company, a corporation organized and existing under the laws of the State of Texas, with its principal office and place of business located at 1615 Main Street, Dallas 1, Texas.

x. Friedlander & Sons, Inc., a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 501 Pike Street, Seattle 1, Washington.

xi. J. Herbert Hall Co., Inc., a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 725 East Colorado Boulevard, Pasadena, California.

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xii. H. J. Howe, Inc., a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 201-3 South Salina Street, Syracuse, New York.

xiii. S. Jacobs Co., a corporation organized and existing under the laws of the State of Minnesota, with its principal office and place of business located at 811 Nicolett Avenue, Minneapolis 2, Minnesota.

xiv. J. Jessop & Sons, Inc., a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 1041 Fifth Avenue, San Diego 1, California.

xv. S. Joseph & Sons (Incorporated), a corporation organized and existing under the laws of the State of Iowa, with its principal office and place of business located at 320-22 Sixth Avenue, Des Moines, Iowa.

xvi. Keller & George, Inc., a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at 214 East Main Street, Charlottesville, Virginia.

xvii. Kimball's Inc., a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 428 Gay Way, Knoxville, Tennessee.

xviii. Carl E. Lindquist and Dwight C. Lindquist, copartners doing business as Lindquist Jewelers, with their principal office and place of business located at 1137 Broadway, Rockford, Illinois.

xix. Thomas Long Company, a corporation organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 40-42 Summer Street, Boston 10, Massachusetts.

xx. Mermod, Jaccard & King Jewelry Company, a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business located at Ninth and Locust Streets, St. Louis 1, Missouri.

xxi. John M. Roberts & Sons Co., a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at 492-31 Wood Street, Pittsburgh 22, Pennsylvania.

xxii. Harry Rosenzweig and Newton Rosenzweig, copartners doing business as I. Rosenzweig & Sons, with their principal office and place of business located at 35 North First Avenue, Phoenix 3, Arizona.

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xxiii. Albert S. Samuels Co., a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 856 Market Street, San Francisco 2, California.

xxiv. Schneider's Jewelers, Inc., a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 290 Wall Street, Kingston, New York.

xxv. Charles Schwartz & Son, Inc., a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at 1311-13 F Street, N.W., Washington 5, D.C.

xxvi. Underwood Jewelers, Inc., a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at 229 Hogan Street, Jacksonville 2, Florida.

xxvii. William Wise & Son, Inc., a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 487 Fulton Street, Brooklyn 1, New York.

xxviii. Harry Zell, Daniel Zell, Martin Zell, Milton Zell, Leonard Zell, and Allen Zell, copartners doing business at Zell Brothers, with their principal office and place of business located at 800 S. W. Morrison Street, Portland 5, Oregon.

xxix. Leonard G. Zimmer, Jr., and Victoria Zimmer, copartners doing business as Zimmer Brothers, with their principal office and place of business located at 329 Main Street, Poughkeepsie, New York, successors in interest to the partnership of Leonard G. Zimmer, Sr. and Leonard G. Zimmer, Jr., previously doing business as Zimmer Brothers with their principal office and place of business located at 329 Main Street, Poughkeepsie, New York.

5. Each of the NJG members is engaged, in its respective trading area, in the business of selling, directly or through subsidiaries and affiliated corporations and partnerships, jewelry, watches, china, silver, crystal and related products at retail to consumers.

II

RELATIONSHIPS BETWEEN RESPONDENTS

6. Respondent Robert Carp, acting individually and through respondent Robert Carp, Inc., is engaged in the business of acting as resident New York City buyer, agent and representative of the NJG members. In such capacity, respondent Robert Carp performs

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various services for the NJG members including purchasing items for resale by the NJG members and arranging for the publication of catalogs for distribution by the NJG members. Respondents Robert Carp and Robert Carp, Inc., are compensated by each NJG member by the payment of commissions for such portion of the services performed for the NJG members as is attributed to the particular member, and by the payment of an annual fee of \$425 per member for membership in respondent National Jewelers Group, Inc.

7. Respondent National Jewelers Group, Inc., was organized and is maintained for the sole purpose of permitting the NJG members to use the corporate form of business association in providing advice and assistance to respondents Robert Carp and Robert Carp, Inc.

8. The respondent NJG members make joint use of the various services provided by respondents Robert Carp and Robert Carp, Inc., and they collaborate together, through respondent National Jewelers Group, Inc., to assist and advise respondents Robert Carp and Robert Carp, Inc., in performing such services.

III

INTERSTATE COMMERCE

9. Each of the NJG members is substantially engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that each such member purchases various products for resale, in substantial quantities, from suppliers located in other States and causes such products to be transported from their State or States of origin to other States; in that each such member has collaborated with each other such member, through respondent National Jewelers Group, Inc., in furthering the activities of their mutual agents and representatives, respondents Robert Carp and Robert Carp, Inc.; and in that each such member has distributed substantial quantities of catalogs produced for the members of National Jewelers Group, Inc., pursuant to which distribution each such member has caused substantial quantities of catalogs to be transported from their State of origin to other States, and in the course of which distribution each such member has disseminated advertising paid for in substantial part by suppliers located in States other than the States in which such members are located and in which such members disseminate such advertising.

10. Respondent National Jewelers Group, Inc., is substantially engaged in commerce, as "commerce" is defined in the Federal

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Trade Commission Act, in that said respondent acts as the conduit or instrumentality through which the NJG members associate and collaborate together to further the performance for them of various services by respondents Robert Carp and Robert Carp, Inc., which services include the purchase and transportation of substantial quantities of products in interstate commerce and the production and dissemination of substantial quantities of advertising material in interstate commerce.

11. Respondent Robert Carp, Inc., is substantially engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that said respondent acts as the conduit or instrumentality through which respondent Robert Carp provides various services for the NJG members which services include arranging for the purchase and transportation of substantial quantities of products in interstate commerce and arranging for the production and dissemination of substantial quantities of advertising material in interstate commerce. Respondent Robert Carp is substantially engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that, through his conduit or instrumentality, Robert Carp, Inc., he performs various services for the NJG members which services include arranging for the purchase and transportation of substantial quantities of products in interstate commerce and arranging for the production and dissemination of substantial quantities of advertising material in interstate commerce.

IV

RESPONDENTS' UNFAIR METHOD OF COMPETITION

12. The retail distribution of jewelry, watches, china, silver, crystal and related products, in which the respondent NJG members are each engaged, is carried on principally by retail jewelry and department stores, and is sometimes referred to as "the retail jewelry business." In each of the respective trading areas of the NJG members, there are several other enterprises engaged in the retail jewelry business. The retail jewelry business is characterized by substantial competition between and among all enterprises engaged in such business in each trading area. Such competition is characterized, in substantial part, by substantial expenditures, by all or many of the enterprises engaged in such competition, for advertising in local media of general circulation, such as newspapers, radio and television, as well as for other forms of advertis-

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ing, such as direct mailings, distribution of promotional material at point of sale, and maintenance of elaborate displays at point of sale.

13. In the course of their engagement in the competition described in Paragraph 12 hereof, the NJG members regularly participate in the cooperative advertising programs promulgated by some of their suppliers. Each of such plans provides for reimbursement by the supplier of all or part of a customer's cost of advertising the supplier's products in certain local media. The only media in which advertising can be placed under the aforesaid plans are newspapers with paid circulations, radio and television.

14. As a further aspect of their engagement in the competition described in Paragraph 12 hereof, the NJG members distribute substantial quantities of catalogs, the production of which is arranged by respondents Robert Carp and Robert Carp, Inc., and which are copyrighted in the name of respondent Robert Carp. Such catalogs contain advertisements of the products of several suppliers, and are distributed to the public free of charge by the NJG members by direct mailing. When so distributed, such catalogs bear the imprint of the particular NJG member distributing them. The NJG members distribute such catalogs as a method of promoting their own sales generally and as a method of promoting their own sales of the products advertised therein specifically. Each year, respondents Robert Carp and Robert Carp, Inc. arrange for the production of three such catalogs for distribution by the NJG members: a so-called "Christmas catalog" which is distributed during the Christmas season, a prime retail sales period for the retail jewelry business; a so-called "Spring catalog" which is distributed during the spring, another prime retail sales period for the retail jewelry business; and a so-called "Charm catalog" which is distributed throughout the year and which is devoted exclusively to advertisements of charms.

15. In the course of arranging for the production of such catalogs, respondents Robert Carp and Robert Carp, Inc, acting as agents and representatives of the NJG members and acting with the collaboration and assistance of the NJG members, induce various suppliers of the NJG members to make substantial payments as compensation or in consideration for inclusion of their products in such catalogs. Such payments subsidize a substantial portion of the cost of production of such catalogs, thus making such advertising material available to the NJG members for substantially less than its actual cost of production. As an example of the

practices alleged herein, during the calendar year 1960, various suppliers of the NJG members paid a total of \$73,725 for inclusion of their products in such catalogs.

16. Each of the respondents named herein knew, or should have known, that the suppliers making such payments were doing so, that such suppliers had been induced to do so by or in behalf of the NJG members as a group; and that, as a result of such payments, catalog advertising material was made available to the NJG members for substantially less than its actual cost of production. Each of the respondents named herein knew, or should have known, that each supplier making such payments did not make such payments or other consideration available on proportionally equal terms to all its other customers competing with the NJG members in the sale or distribution of the products of such supplier generally, or competing with the NJG members in the sale or distribution of the products of such supplier advertised in such catalogs specifically.

17. The acts and practices of respondents as alleged above are all to the prejudice and injury of competitors of respondents and of the public, and constitute unfair acts and practices in commerce and are an unfair method of competition, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Robert Carp, 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 630 Fifth Avenue, New York, New York.

Respondent Robert Carp is an individual and officer of said corporation and his address is the same as that of said corporation.

2. Respondent National Jewelers Group, Inc., is a nonprofit membership corporation organized and existing under the laws of the State of New York, and its address is the same as that of respondent Robert Carp, Inc.

3. The following respondents are members of respondent National Jewelers Group, Inc.:

Respondent Coleman E. Adler & Sons, Inc., a corporation organized and existing under the laws of the State of Louisiana, with its principal office and place of business located at 722-24 Canal Street, New Orleans 12, Louisiana.

Respondent Claude S. Bennett, Inc., a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business located at 207 Peachtree Street, N.E., Atlanta 3, Georgia.

Respondent Bromberg & Company, Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 123 North Twentieth Street, Birmingham 3, Alabama.

Respondent Carroll's Jewelers, Inc., a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at 365 Miracle Mile, Miami 34 (Coral Gables), Florida.

Respondent B.C. Clark, Inc., a corporation organized and existing under the laws of the State of Oklahoma, with its principal office and place of business located at 113 North Harvey, Oklahoma City, Oklahoma.

Respondent Cornell Group Service Corporation, a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 53 Water Street, Newburgh, New York.

Respondent Rudolph Deutsch Co., a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 1421 Euclid Avenue, Cleveland 15, Ohio.

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Respondent S. Joseph & Sons (Incorporated), a corporation organized and existing under the laws of the State of Iowa, with its principal office and place of business located at 320-22 Sixth Avenue, Des Moines, Iowa.

Respondent Keller & George, Inc., a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at 214 East Main Street, Charlottesville, Virginia.

Respondent Kimball's Inc., a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 428 Gay Way, Knoxville, Tennessee.

Respondent Carl E. Lindquist and Dwight C. Lindquist, co-partners doing business as Lindquist Jewelers, with their principal office and place of business located at 1137 Broadway, Rockford, Illinois.

Respondent Thomas Long Company, a corporation organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 40-42 Summer Street, Boston 10, Massachusetts.

Respondent Mermod, Jaccard & King Jewelry Company, a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business located at Ninth and Locust Streets, St. Louis 1, Missouri.

Respondent John M. Roberts & Son Co., a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at 492-31 Wood Street, Pittsburgh 22, Pennsylvania.

Respondents Harry Rosenzweig and Newton Rosenzweig, copartners doing business as I. Rosenzweig & Sons, with their principal office and place of business located at 35 North First Avenue, Phoenix 3, Arizona.

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Respondents Harry Zell, Daniel Zell, Martin Zell, Milton Zell, Leonard Zell and Allen Zell, copartners doing business as Zell Brothers, with their principal office and place of business located at 800 S. W. Morrison Street, Portland 5, Oregon.

Respondents Leonard G. Zimmer, Jr. and Victoria Zimmer, copartners doing business as Zimmer Brothers, with their principal office and place of business located at 329 Main Street, Poughkeepsie, New York, successors in interest to the partnership of Leonard G. Zimmer, Sr. and Leonard G. Zimmer, Jr., previously doing business as Zimmer Brothers at same address.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Robert Carp, Inc.; National Jewelers Group, Inc.; Coleman E. Adler & Sons, Inc.; Claude S. Bennett, Inc.; Bromberg & Company, Inc.; Carroll's Jewelers Inc.; B. C. Clark, Inc.; Cornell Group Service Corporation; Rudolph Deutsch Co.; George R. Dodson, Inc.; Arthur A. Everts Company; Friedlander & Sons, Inc.; J. Herbert Hall Co., Inc.; H. J. Howe, Inc.; S. Jacobs Co.; J. Jessop & Sons, Inc.; S. Joseph & Sons (Incorporated); Keller & George, Inc.; Kimball's Inc.; Thomas Long Company; Mermod, Jaccard & King Jewelry Company; John M. Roberts & Son Co.; Albert S. Samuels Co.; Schneider's Jewelers, Inc.; Charles Schwartz & Son, Inc.; Underwood Jewelers, Inc.; William Wise & Son, Inc.; each a corporation and their respective officers and directors; and respondents Robert Carp, individually and as an officer of Robert Carp, Inc.; Carl E. Lindquist and Dwight C. Lindquist, copartners doing business as Lindquist Jewelers; Harry Rosenzweig and Newton Rosenzweig, copartners doing business as I. Rosenzweig & Sons; Harry Zell, Daniel Zell, Martin Zell, Milton Zell, Leonard Zell, and Allen Zell, copartners doing business as Zell Brothers; and Leonard G. Zimmer, Jr. and Victoria Zimmer, copartners doing business as Zimmer Brothers; and each respondent's respective employees, agents and representatives, acting directly or through any corporate or other device, in or in connection with any purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, severally and otherwise, from:

Inducing and receiving, or receiving, or contracting for the receipt of, the payment of anything of value to or for the benefit of any respondent or of any other retailer, as compensation or in consideration for any services or facilities consisting of advertising or other publicity in a catalog, newspaper, broadcast or telecast or in any other advertising medium, furnished, in whole or in part, by or through any respondent or any other retailer in connection with the processing, handling, sale, or offering for sale, of any products purchased by any respondent or by any other retailer, when the said respondents know or should know that such payment or consideration is not made available on proportionally equal terms by the manufacturer or supplier to all its other cus-

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tomers competing in the distribution of such products with any respondent or any other retailer to whom or for whose benefit the payment or other consideration is made.

It is further ordered, That the respondents herein 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 this order.
