

Complaint

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IN THE MATTER OF

ADOLPH GOTTSCHO, INC., ADOLPH GOTTSCHO, RAY GOTTSCHO, IRA S. GOTTSCHO, AND ADOLPH GOTTSCHO

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

Docket 5517. Complaint, Nov. 21, 1947—Decision, Aug. 16, 1949

Where a corporation and its three officers and principal stockholders engaged in the processing and manufacture and competitive interstate sale and distribution of industrial marking devices, rubber stamps, metal stencils and accessories to dealers, usually retail stationers, and to consumers, principally manufacturing pharmaceutical firms, chain grocery stores, wholesale grocers, banks and industrial firms—

Discriminated in price between different consumer purchasers of their products of like grade and quality by selling to some at higher prices than to others; Effect of which discriminations in price had been and might be substantially to lessen, injure, destroy and prevent competition between them and their competitors in the sale and distribution of said products in commerce, and had been and might be to tend to create a monopoly in them in said line of commerce:

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

Mr. Edward S. Ragsdale for the Commission.

Mr. Daniel Eisenberg, of New York City, for Adolph Gottscho, Inc., and Adolph Gottscho.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have been and are now violating the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Adolph Gottscho, 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 190 Duane Street, New York, N. Y. Respondent corporation also maintains a branch

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sales office at No. 1 Hudson Street, New York, N. Y. The respondent corporation is engaged in the business of processing, manufacturing, offering for sale, selling, and distributing industrial marking devices, rubber stamps, metal stencils, and accessories. The products distributed by respondent are sold to dealers who are usually retail stationers, and also directly to consumers. Respondent's sales of its rubber stamps directly to consumers are made principally to manufacturing pharmaceutical firms, chain grocery stores, wholesale grocery firms, banks and industrial firms. The complaint herein is directed solely to respondent's sales of rubber stamps and other products to consumers.

PAR. 2. Respondent Adolph Gottscho is an individual residing in New York, N. Y., and is one of the principal stockholders in said respondent corporation. He is now president of Adolph Gottscho, Inc., and has been an officer of said corporation since some time after June 19, 1936. After becoming an officer and at the present time and for some time past as president, respondent Adolph Gottscho, together with Ray Gottscho and Ira S. Gottscho, has exercised and still exercises a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies. The respondent corporation is owned and controlled by the three individual respondents named above.

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

PAR. 4. Respondent Ira S. Gottscho is an individual residing in New York, N. Y., and is one the principal stockholders in respondent corporation, Adolph Gottscho, Inc. He is now secretary and treasurer of Adolph Gottscho, Inc., and has been an officer of that corporation since some time after June 19, 1936. After becoming an officer and at the present time and for some time past as secretary and treasurer, respondent Ira S. Gottscho, together with respondent Adolph Gottscho and respondent Ray Gottscho, has exercised and still exercises a substantial degree of authority and control over the business conducted

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by said corporation, including direction of its distribution and sales policies.

PAR. 5. Respondents Adolph Gottscho, as president, Ray Gottscho, as vice president, and Ira S. Gottscho, as secretary and treasurer, of said respondent corporation Adolph Gottscho, Inc., and respondent Adolph Gottscho, Inc., are now engaged and for several years prior hereto have engaged in the business of processing, manufacturing, offering for sale, selling and distributing industrial marking devices, rubber stamps, metal stencils, and other products, for their own account. The individual respondents have and are now conducting said business through Adolph Gottscho, Inc., said corporate respondent, which respondent has likewise engaged in said business for the past several years.

PAR. 6. Each of the individual respondents through the corporate respondent Adolph Gottscho, Inc., manufacture, process, and distribute rubber stamps and other products which are sold and distributed by the respondents to dealers and also directly to consumers. Some customers of respondents purchasing such products are located in States other than the State in which respondent's business is located, and some of respondent's customers, although located within the State in which respondent's business is located, direct that the shipments of their purchases of rubber stamps and other products be made by the respondent to its branch offices, some of which branch offices are located in States other than the State in which respondent's business is located, and in such cases, respondent causes such products to be shipped and transported across State lines from respondent's place of business to such customers, or to such branch offices of such customers. There is and has been at all times mentioned, a continuous course of trade and commerce in said products between respondent's factory and warehouse and the purchasers of said products, some of which are located in States other than the State in which respondent's business is located as aforesaid. Said products are sold and distributed for use within the various States of the United States.

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

PAR. 8. In the course and conduct of the business of each respondent, as aforesaid, respondents since June 19, 1936, have been and are now

discriminating in price between different purchasers buying such products of like grade and quality by selling their products to some of their customers at higher prices than respondents sell similar products of like grade and quality to other of their customers. Such discriminations in price relate only to the respondents' sale of rubber stamps and other products to consumers. Respondents' sales made to dealers are not involved herein.

PAR. 9. The effect of each of the respondents' discriminations in price, hereinbefore set out, has been and may be substantially to lessen competition and to injure, destroy, and prevent competition between respondents and their competitors in the sale and distribution of rubber stamps and other products in interstate commerce, and has been and may be to tend to create a monopoly in respondents in said line of commerce.

PAR. 10. The foregoing acts and practices of the respondents, namely, Adolph Gottscho, Inc., a corporation, Adolph Gottscho, as president, Ray Gottscho, as vice president, and Ira S. Gottscho, as secretary and treasurer, of Adolph Gottscho, Inc., since June 19, 1936, are in violation of the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act approved June 19, 1936.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), the Federal Trade Commission, on November 21, 1947, issued, and subsequently served, its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of subsection (a) of section 2 of that act as amended. After the issuance of said complainant, the respondents, in due course, filed their answer, in which they admit all material allegations of fact set forth in said complaint and waive all intervening procedure and further hearing as to said facts but deny that said alleged facts constitute a violation of said statute. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Adolph Gottscho, 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 190 Duane Street, New York, N. Y. Respondents Adolph Gottscho, Ray Gottscho, and Ira S. Gottscho, are, respectively, president, vice president, and secretary-treasurer of respondent corporation. Each of these individuals is one of the principal stockholders of the corporation, and each exercises, and has exercised, a substantial degree of authority and control over the corporation, including direction of its distribution and sales policies.

PAR. 2. Respondents are, and for several years last past have been, engaged in the business of processing, manufacturing, offering for sale, selling, and distributing industrial marking devices, rubber stamps, metal stencils, and accessories. Said products are sold and distributed to dealer and consumer purchasers. The dealer purchasers are usually retail stationers, while the consumer purchasers are principally manufacturing pharmaceutical firms, chain grocery stores, wholesale grocers, banks, and industrial firms. The present proceeding involves only sales made to consumer purchasers.

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

PAR. 4. In the offering for sale, sale, and distribution of their aforesaid products, respondents are, and at all times mentioned herein have been, in substantial competition with other corporations, partnerships, individuals, and firms also engaged in manufacturing, offering for sale, selling, and distributing such products in commerce among and between the various States of the United States.

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

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and quality to other of such purchasers. Such products are sold and distributed for use within the various States of the United States.

PAR. 6. The effect of respondents' discriminations in price has been, and may be, substantially to lessen, injure, destroy, and prevent competition between respondents and their competitors in the sale and distribution of rubber stamps and other products in commerce as aforesaid, and has been, and may be, to tend to create a monopoly in respondents in said line of commerce.

CONCLUSION

The acts and practices of respondents as herein found violate subsection (a) of section 2 of the aforesaid Clayton Act as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer said respondents admit all the material allegations of fact set forth in the complaint and waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondents have violated subsection (a) of section 2 of an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13) :

It is ordered, That respondent Adolph Gottscho, Inc., a corporation, its officers, respondents Adolph Gottscho, Ray Gottscho, and Ira S. Gottscho, as officers of said corporation, said respondents' representatives, agents and employees, directly or indirectly, through any corporate or other device, in the sale of rubber stamps and other products in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from :

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

2. Otherwise discriminating in price, either directly or indirectly, among different purchasers of rubber stamps and other products of

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like grade and quality in any manner prohibited by section 2 (a) of said Clayton Act as amended.

It is further ordered, That respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

JOSEPH WINKLER & COMPANY ET AL.

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

Docket 5645. Complaint, Mar. 11, 1949—Decision, Sept. 7, 1949

Where a corporation and two officers thereof, engaged in the interstate sale and distribution of general merchandise, especially hardware and household electrical appliances, fixtures, chinaware and related products, and in the conduct of a mail-order business in said commodities; in advertising their said products in circulars, catalogs, pamphlets, price lists, and newspapers and other periodicals, directly and by implication—

- (a) Represented falsely that said wares were immediately available in unlimited quantities, and that goods ordered would be shipped immediately; The facts being that in many instances there were long intervals between the receipt of the order and the shipment of the goods;
- (b) Represented falsely that said wares were of good quality and were usable for the purposes for which they were intended, and that (in the absence of a statement to the contrary), they were new;
- (c) Represented that prices quoted by them were wholesale prices when in fact they were identical with those which they quoted as retail; and
- (d) Represented that they would ship the commodities as described by them according to the orders received;

The facts being that in many instances they substituted inferior, or used articles, and articles not in usable condition;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true, and thereby into the purchase of substantial quantities of their products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Charles S. Cox for the Commission.

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Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Joseph Winkler &

