

Complaint

59 F.T.C.

or improvement in the condition of the skin or scalp unless such is the fact.

(d) That said device will check thinning hair, prevent or overcome baldness or prevent diseases of the hair or scalp; or that said device will effect any correction or improvement of the hair or scalp unless such is the fact.

2. Disseminating or causing to be disseminated any advertisement by any means, for the purpose of inducing, directly or indirectly, the purchase, in commerce, as "commerce" is defined in the Federal Trade Commission Act of said device, which advertisements contain the representations prohibited in paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 19th day of July 1961, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

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IN THE MATTER OF

KRISS ELECTRONICS, INC., ET AL.

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

*Docket 8173. Complaint, Nov. 14, 1960—Decision, July 22, 1961*

Consent order requiring Newark, N.J., manufacturers of rebuilt television picture tubes containing used parts, to cease labeling and otherwise representing their said products falsely as "NEW Television Picture Tubes", and to disclose clearly to purchasers that such tubes were rebuilt and contained used parts.

COMPLAINT

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 Kriss Electronics, Inc., a corporation, and Charles Kriss, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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 in that respect as follows:

PARAGRAPH 1. Respondent Kriss Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 191-195 Oraton Street, Newark, New Jersey.

Respondent Charles Kriss is an individual and an officer of said corporation. He formulates, controls and directs the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, offering for sale, sale and distribution of rebuilt television picture tubes containing used parts to distributors who sell to others for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents made certain statements concerning their products on labels and by other media. Among and typical of such statements is the following:

NEW Television Picture Tubes

PAR. 5. Through the use of the aforesaid statement, respondents represented that certain of their television picture tubes were new in their entirety.

PAR. 6. Said statement and representation was false, misleading and deceptive. In truth and in fact, the television picture tubes represented as being "new" are not new in their entirety.

PAR. 7. The television picture tubes sold by respondents are rebuilt and contain used parts. Respondents do not disclose on the tubes, on invoices or in an adequate manner on the cartons in which they are packed, or in any other manner, that said television picture tubes are rebuilt and contain used parts.

When television picture tubes are rebuilt containing used parts, in the absence of any disclosure to the contrary, or in the absence

of an adequate disclosure, such tubes are understood to be and are readily accepted by the public as new tubes.

PAR. 8. By failing to disclose the facts as set forth in Paragraph Seven, respondents place in the hands of uninformed or unscrupulous dealers means and instrumentalities whereby they may mislead and deceive the public as to the nature of their said television picture tubes.

PAR. 9. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of television picture tubes.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statement and representation, and the failure of respondents to disclose on their television picture tubes, on invoices, and in an adequate manner on the cartons in which they are packed, or in any other manner, that the tubes are rebuilt containing used parts have had, and now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said picture tubes are new in their entirety and into the purchase of substantial quantities of respondents' tubes by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Mr. Michael J. Vitale* for the Commission.

*Ravin & Ravin*, by *Mr. David N. Ravin*, of Newark, N.J., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated November 14, 1960, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On May 25, 1961, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only, does not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Kriss Electronics, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 191-195 Oraton Street, in the City of Newark, State of New Jersey.

Respondent Charles Kriss is an officer of said corporate respondent. He formulates, directs and controls the acts and practices of said corporate respondent. His address is the same as the corporate respondent.

2. 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 Kriss Electronics, Inc., a corporation, and its officers, and Charles Kriss, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of rebuilt television picture tubes containing used parts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said television picture tubes are new.

2. Failing to clearly disclose on the tubes, on the cartons in which they are packed, on invoices, and in advertising that said tubes are rebuilt and contain used parts.

3. Placing any means or instrumentality in the hands of others whereby they may mislead the public as to the nature and condition of respondents' television picture tubes.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22d day of July 1961, become the decision of the Commission; and, accordingly:

*It is 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 the order to cease and desist.

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IN THE MATTER OF  
SHULTON, INC.

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

*Docket 7721. Complaint, Jan. 5, 1960—Decision, July 25, 1961*

Order requiring a manufacturer of toiletry, chemical, and pharmaceutical products with main office in Clifton, N.J.—with total sales in 1958 in excess of \$37,000,000—to cease violating Sec. 2(d) of the Clayton Act by such practices as paying to J. Weingarten, Inc., of Houston, Tex., \$6,000 as compensation for newspaper advertising of one of its deodorant products in connection with the chain's anniversary sales.

*Mr. Fredric T. Suss and Mr. Timothy J. Cronin, Jr.*, for the Commission.

*Howrey, Simon, Baker & Murchison*, by *Mr. David C. Murchison* and *Mr. Richard L. Perry*, of Washington, D.C., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

The respondent is charged with having made discriminatory payments to some of its customers in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. Subsequent to the issuance of the complaint, respondent filed a number of pleadings, but it will serve no purpose to make a recital

thereof, in that respondent, in its last answer filed pursuant to Rule 3.7 of the Rules of the Commission, elected not to contest the allegations of fact set forth in the complaint, admitted all material allegations to be true and waived a hearing as to the facts so alleged. In such answer the respondent reserved the right to submit proposed findings of fact and conclusions of law, and such other rights as it may have in the premises.

The findings of fact and conclusions of law, and other requests proposed by the parties, not hereinafter specifically found or concluded, are herewith rejected. The Hearing Examiner, having considered the record herein, makes the following findings of fact and conclusions:

1. Respondent, Shulton, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 697 Route 46, Clifton, New Jersey.

2. Respondent is now and has been engaged in the business of manufacturing, selling and distributing toiletry, chemical and pharmaceutical products. It sells its products to retail chain store organizations, independent drug and grocery stores, department stores, and wholesalers throughout the United States, and certain countries in Europe and Latin America. Respondent's total sales are substantial, having exceeded \$37,000,000 in the year 1958.

3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from the respondent's principal place of business, located in New Jersey, to customers located in other states of the United States, and certain countries in Europe and Latin America.

4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

5. An example of the kind of activities which occurred in the course and conduct of respondent's business as found in paragraph 4 above is that during the year 1958, respondent contracted to pay and did pay to J. Weingarten, Inc., \$6,000 as compensation or as

an allowance for advertising or other services or facilities furnished by or through J. Weingarten, Inc. in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with J. Weingarten, Inc. in the sale and distribution of products of like grade and quality purchased from respondent.

## CONCLUSION OF LAW

The foregoing facts as alleged and admitted support the following conclusion:

The acts and practices of respondent are in violation of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

## ORDER

*It is ordered.* That respondent, Shulton, Incorporated, a corporation, its officers, employees, agents or representatives, directly or through any corporate or other device, in or in connection with the sale in commerce, as "commerce" is defined in the Clayton Act, as amended, of toiletry products, chemical products, pharmaceutical products or other merchandise, do forthwith cease and desist from:

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

## OPINION OF THE COMMISSION

By SECREST, *Commissioner*:

This matter has come on for hearing on respondent's appeal from the initial decision of the hearing examiner filed January 5, 1961. The complaint charged respondent with violating subsection (d) of Section 2 of the Clayton Act, as amended. The following allegations were made therein:

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such pay-

