

Complaint

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IN THE MATTER OF

DEKLE BROKERAGE CO., INC., ET AL.

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

Docket 5880. Complaint, May 7, 1951—Decision, Aug. 16, 1951

Where a corporation, and its president and stockholder, who was responsible for its acts and practices, engaged as a broker of fruits and vegetables, and as a jobber and wholesaler thereof in the purchase of such produce from vendors in other states and in its sales to wholesalers and retailers—

Received and accepted from such vendors commissions, brokerage or other compensation, of allowances or discounts in lieu thereof, in connection with purchases of produce made on respondent's own account, as jobber and wholesaler, in purchasing in their own name and for shipment to their places of business for resale:

Held, That said respondents in receiving and accepting brokerage fees, etc., from sellers under the circumstances set forth, violated the provisions of subsection (c) of section 2 of the Clayton Act as amended.

Before *Mr. Frank Hier*, trial examiner.

Mr. Peter J. Dias and *Mr. Richard E. Ely* for the Commission.

Howell & Johnston, of Mobile, Ala., for respondents.

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, have been and are now violating the provisions of subsection (c) 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 Dekle Brokerage Co., Inc., is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 600 North Water Street, Mobile, Ala., and with a branch office located in Jackson, Miss.

Respondent Arthur U. Dekle is an individual with principal office and place of business located at 600 North Water Street, Mobile, Ala. He is a stockholder in and president of respondent Dekle Brokerage Co., Inc. As such, he directs, controls and is responsible for the acts and practices of said corporate respondent which are hereinafter alleged.

PAR. 2. Respondents are now and for several years have been engaged in business as a broker of fruits and vegetables, hereinafter

referred to as produce, and as a jobber and wholesaler of produce, selling said produce to both wholesalers and retailers.

In the course and conduct of their business as a jobber and wholesaler of produce, respondents are and have been engaged in commerce, as commerce is defined in the Clayton Act as amended by the Robinson-Patman Act, purchasing such produce from vendors whose places of business are located in States other than Alabama or Mississippi, and causing it to be shipped to their places of business within the States of Alabama or Mississippi or both.

PAR. 3. In the course and conduct of said jobbing and wholesaling business in commerce, said vendors pay or grant to respondents and respondents receive or accept commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, in connection with said purchases of produce made on their own account.

PAR. 4. Among the circumstances under which respondents receive or accept the commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof alleged in paragraph 3, are those existing in the normal course and conduct of their business as a jobber and wholesaler in making said purchases of produce from said vendors for resale to wholesalers and retailers.

Such circumstances are that respondents transmit purchase orders directly to said vendors, naming themselves as purchasers. Said vendors, at respondents' request, ship said produce so ordered directly to respondents' places of business in Mobile, Ala., or Jackson, Miss., or both. Said vendors invoice respondents for said produce at the gross price agreed upon less an amount designated as brokerage, and the net amount of said invoices is paid by respondents to said vendors. Said produce so purchased is resold by respondents to wholesalers or retailers at prices satisfactory to respondents.

PAR. 5. Illustrative of respondents' acts and practices, alleged in paragraph 4, was their purchase in the name of Dekle Brokerage Co., in or about July 1949, of a carload of grapes from a vendor in California. Said grapes were shipped at respondents' request to Jackson, Miss., for partial unloading and thence to Mobile, Ala., as final destination.

At the request of said vendor, respondents informed him that their brokerage fee was \$40 which amount said vendor deducted from the gross price on the invoice sent to respondents. Respondents paid the net amount of said invoice.

Respondents resold said grapes to wholesale or retail purchasers in comparatively small quantities for their own account.

PAR. 6. The acts and practices of the respondents as above alleged

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violate subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, sec. 13).

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated August 16, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Clayton Act as amended by the Robinson-Patman Act (15 U. S. C. 13), the Federal Trade Commission, on May 7, 1951, issued and subsequently served its complaint in this proceeding upon Dekle Brokerage Co., Inc., a corporation, and Arthur U. Dekle, individually and as president thereof, charging them with violation of subsection (c) of section 2 of said act as amended. On June 26, 1951, respondents filed their answer thereto, wherein they admitted all the material allegations of fact set forth in said complaint, waived further notice and consented to the entry of an order to cease and desist from the violations charged in the complaint. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answer thereto, and said trial examiner having duly considered the record herein, makes the following findings as to the facts, conclusion drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Dekle Brokerage Co., Inc., is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 600 North Water Street, Mobile, Ala., and with a branch office located in Jackson, Miss.

Respondent Arthur U. Dekle is an individual with principal office and place of business located at 600 North Water Street, Mobile, Ala. He is a stockholder in and president of respondent Dekle Brokerage Co., Inc. As such, he directs, controls and is responsible for the acts and practices of said corporate respondent which are hereinafter alleged.

PAR. 2. Respondents are now and for several years have been engaged in business as a broker of fruits and vegetables, hereinafter

referred to as produce, and as a jobber and wholesaler of produce, selling said produce to both wholesalers and retailers.

In the course and conduct of their business as a jobber and wholesaler of produce, respondents are and have been engaged in commerce, as commerce is defined in the Clayton Act as amended by the Robinson-Patman Act, purchasing such produce from vendors whose places of business are located in States other than Alabama or Mississippi, and causing it to be shipped to their places of business within the States of Alabama or Mississippi or both.

PAR. 3. In the course and conduct of said jobbing and wholesaling business in commerce, said vendors pay or grant to respondents and respondents receive or accept commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, in connection with said purchases of produce made on their own account.

PAR. 4. Among the circumstances under which respondents receive or accept the commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof found in paragraph 3, are those existing in the normal course and conduct of their business as a jobber and wholesaler in making said purchases of produce from said vendors for resale to wholesalers and retailers.

Such circumstances are that respondents transmit purchase orders directly to said vendors, naming themselves as purchasers. Said vendors, at respondents' request, ship said produce so ordered directly to respondents' places of business in Mobile, Ala., or Jackson, Miss., or both. Said vendors invoice respondents for said produce at the gross price agreed upon less an amount designated as brokerage, and the net amount of said invoices is paid by respondents to said vendors. Said produce so purchased is resold by respondents to wholesalers or retailers at prices satisfactory to respondents.

PAR. 5. Illustrative of respondents' acts and practices, found in paragraph 4, was their purchase in the name of the Dekle Brokerage Co., in or about July 1949, of a carload of grapes from a vendor in California. Said grapes were shipped at respondents' request to Jackson, Miss., for partial unloading and thence to Mobile, Ala., as final destination.

At the request of said vendor, respondents informed him that their brokerage fee was \$40 which amount said vendor deducted from the gross price on the invoice sent to respondents. Respondents paid the net amount of said invoice.

Respondents resold said grapes to wholesale or retail purchasers in comparatively small quantities for their own account.

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CONCLUSION

In receiving and accepting brokerage fees or commissions, and allowances or discounts in lieu thereof, from sellers upon purchases of merchandise in the manner and under the circumstances as hereinabove found, respondents have violated the provisions of subsection (c) of section 2 of the Clayton Act as amended.

ORDER

It is ordered, That Dekle Brokerage Co., Inc., a corporation, and its officers, and Arthur U. Dekle, individually and as president of Dekle Brokerage Co., Inc., and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the purchase of fruits, vegetables, and other produce in commerce, as "commerce" is defined in the Clayton Act as amended, do forthwith cease and desist from receiving or accepting, directly or indirectly, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, from any seller on or in connection with purchases made from such seller—

(a) When such purchases are made for respondents' own account, or

(b) When such purchases are made as agent or buying representative of the purchaser, or

(c) When, in making such purchases, respondents are acting in fact for or in behalf of, or are subject to the direct or indirect control of, the purchaser.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein 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 the order to cease and desist [as required by said declaratory decision and order of August 16, 1951].

Complaint

IN THE MATTER OF

HAUPTMAN FEATHER COMPANY, INC., ET AL.

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

Docket 5832. Complaint, Dec. 8, 1950—Decision, Aug. 17, 1951

Where a corporation and its three officers, engaged in the interstate sale and distribution of pillows—

Misrepresented the materials of which their pillows were made through attaching thereto labels which represented said materials, respectively, as "50 percent White Goose Down, 50 percent White Goose Feathers"; as "Down"; as "25 percent Duck Down, 75 percent Duck Feathers"; and as "50 percent Down, 50 percent Duck Feathers";

The facts being that the first pillow contained only 33.9 percent white goose down, 47 percent white goose feathers and other materials; that labeled "Down" contained only 43.2, instead of 100 percent thereof, the third contained 10 percent duck down, 78.5 percent duck feathers and other materials; and the fourth contained only 25.4 percent down and 57 percent feathers;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their products and thereby cause it to purchase the same:

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

Before *Mr. William L. Pack*, trial examiner.

Mr. Russell T. Porter for the Commission.

Mr. Harry Heller, of Brooklyn, N. Y., for respondents.

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 Hauptman Feather Co., Inc., a corporation, and Mitchell Hauptman, Abraham Hauptman, and Jean Rabinowitz, individually and as officers 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 Hauptman Feather Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business at 73-75 Wallabout Street, Brooklyn, N. Y. Respondents Mitchell Hauptman, Abraham Hauptman, and Jean Rabinowitz are the president, secre-