

IN THE MATTER OF
SHELL OIL COMPANY

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 6051. Complaint, Oct. 16, 1952—Decision, Mar. 17, 1953

Where a corporation, which was engaged in the production and distribution of a complete line of petroleum products, made about 67% of its sales of kerosene and fuel oils in the "Eastern Midcontinent Territory", and sold in excess of 8% of the total sales for the industry in said territory, which comprised all States east of the Rocky Mountains; and which, prior to 1951, sold to independent dealers who resold its products and similar products of its competitors under their individual trade names, and to other independent dealers who handled its products exclusively and resold them under its own trade name—

- (a) Adopted, put into effect, and enforced a marketing plan whereby sales and contracts for the sale of its kerosene and fuel oils were made only on condition that the purchaser should not use, deal in, or resell such products of its competitors;
- (b) Effectuated said plan through sales contracts with independent dealers which required them, among other things, (1) to adopt and use its color scheme, trademark, and trade name on all delivery equipment; (2) to refrain from selling and delivering kerosene and fuel oils other than its own under its trade name; and (3) to purchase from it specified minimum quantities, based upon the dealer's total purchases of said products from all suppliers during the preceding year; and
- (c) Refused to sell its products to independent dealers who were unwilling or unable to enter into such sales contracts with it and thereby handle and deal in its kerosene and fuel oils exclusively;

Capacity, tendency and effect of which plan, sales contracts, and acts and practices in pursuance thereof might be to prevent its competitors from selling any such products to independent dealers who executed such contracts; to preclude such dealers from all benefits of competition between it and other sellers; and to cut off the source of supply for independent dealers who were unwilling or unable to handle its products exclusively; and

With the further result that its said marketing plan and sales contracts might substantially lessen competition in the lines of commerce in which it and its customers were engaged, and might tend to create a monopoly in it in the production, distribution, and sales in commerce of said products:

Held, That such acts and practices constituted a violation of Section 3 of the Clayton Act.

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Complaint

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Paul H. LaRue* for the Commission.

Mr. W. F. Kenney, *Mr. I. Slifkin* and *Mr. E. A. Hugill, Jr.*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, 15 U. S. C. Sec. 14, the Federal Trade Commission, having reason to believe that the Shell Oil Company, a corporation, hereinafter designated and referred to as respondent, has violated the provisions of section 3 of said Act, the Commission hereby issues its complaint stating its charges in such respects as follows:

PARAGRAPH 1. Respondent, Shell Oil Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 50 West 50th Street, New York 20, N. Y.

PAR. 2. Respondent is now, and for many years past has been engaged in the production, distribution and sale of a complete line of petroleum products, including kerosene and fuel oils which are used for industrial and domestic purposes.

PAR. 3. In the course and conduct of its business, respondent sells and distributes, and for many years last past has sold and distributed, kerosene and fuel oils to customers and purchasers thereof for use, consumption and resale within the United States and the District of Columbia. Until the year, 1951, or thereabout, respondent sold and distributed kerosene and fuel oils to independent dealers who resold said products and similar products of competitors of the respondent under said dealers' individual trade names. Respondent also sold and distributed kerosene and fuel oils for resale under its trade name to independent dealers who handled respondent's said products exclusively.

Approximately 95 percent of respondent's sales of kerosene and fuel oils are made in the territory designated as the "Eastern Midcontinent Territory," which comprises all of the States east of the Rocky Mountains and which is divided into eleven marketing divisions. Said marketing divisions, for the most part, extend over areas of several States and are further subdivided into districts.

During the years 1949 and 1950 respondent's sales of kerosene and fuel oils in said "Eastern Midcontinent Territory," were in excess of 8 percent of total sales for the industry.

PAR. 4. Respondent, in the course and conduct of its said business, sells and distributes kerosene and fuel oils from various plants and

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storage terminals to customers and purchasers thereof in the several States of the United States and in the District of Columbia, causing the said products when sold to be transported from the places of production and storage to customers and purchasers thereof located in States other than the State of origin of such shipments, and there is now, and has been for many years last past, a constant current of trade and commerce in said kerosene and fuel oils between and among the various States of the United States and in the District of Columbia.

PAR. 5. Except insofar as it is, has been, or may have been affected by the unlawful methods, acts and practices as hereinafter alleged, respondent is in substantial competition with various other persons, firms and corporations engaged in the production, sale and distribution of kerosene and fuel oils in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 6. Respondent, commencing sometime during the year 1951, or thereabout, adopted, put into effect and enforced a marketing plan whereby sales and contracts for the sale of its kerosene and fuel oils are made only on the conditions, understanding, and agreements that the purchasers thereof, shall not use, deal in, or resell the kerosene and fuel oils of a competitor or competitors of respondent. Said marketing plan is effectuated by means of sales contracts executed between respondent and independent dealers, the provisions of which require said dealers, among other things (1) to adopt and use the color scheme, trademark and trade name of respondent on all delivery equipment; (2) to refrain from selling and delivering kerosene and fuel oils other than respondent's under respondent's trade name; and (3) to purchase from respondent specified minimum quantities of kerosene and fuel oils. Said minimum quantities are based upon the independent dealer's total purchases of kerosene and fuel oils from all suppliers during the year preceding execution of the sales contract with respondent. Respondent has refused, and does now refuse, to sell kerosene and fuel oils to independent dealers who for various reasons are unwilling or unable to enter into said sales contracts with respondent and thereby handle and deal in respondent's kerosene and fuel oils exclusively.

PAR. 7. The capacity, tendency and effect of the aforesaid plan, sales contracts entered into, and the methods, acts and practices in pursuance thereof may be (a) to prevent respondent's competitors from selling any kerosene and fuel oils to independent dealers who execute such sales contracts; (b) to preclude said dealers from all benefits of competition between respondent and others from whom they could purchase kerosene and fuel oils; and (c) to cut off a source

of supply for independent dealers who are unwilling or unable to handle respondent's products exclusively.

PAR. 8. Furthermore, the effect of respondent's marketing plan and sales contracts made in pursuance thereof containing the aforesaid conditions, agreements and understandings, may be to substantially lessen competition in the line of commerce in which the respondent is engaged and in the line of commerce in which the customers of respondent are engaged or tend to create a monopoly in respondent in the production, distribution and sale in commerce of kerosene and fuel oils.

PAR. 9. The aforesaid acts of respondent constitute a violation of the provisions of section 3 of the hereinabove-mentioned 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).

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Clayton Act, the Federal Trade Commission on October 16, 1952, issued and subsequently served its complaint on the respondent in the caption hereof, charging it with violation of Section 3 of said Act.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

1. Admits all the jurisdictional allegations set forth in the complaint;
2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law;

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on March 17, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission has reason to believe are unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondent consents may be entered herein in final disposition of this proceeding, are as follows :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Shell Oil Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 50 West 50th Street, New York 20, N. Y.

PAR. 2. Respondent is now, and for many years past has been, engaged in the production, distribution and sale of a complete line of petroleum products, including kerosene and fuel oils which are used for industrial and domestic purposes.

PAR. 3. In the course and conduct of its business, respondent sells and distributes, and for many years last past has sold and distributed, kerosene and fuel oils to customers and purchasers thereof for use, consumption and resale within the United States and the District of Columbia. Until the year 1951, or thereabout, respondent sold and distributed kerosene and fuel oils to independent dealers who resold said products and similar products of competitors of the respondent under said dealers' individual trade names. Respondent also sold and distributed kerosene and fuel oils for resale under its trade name to independent dealers who handled respondent's said products exclusively.

Approximately 67 percent of respondent's sales of kerosene and fuel oils are made in the territory designated as the "Eastern Midcontinent Territory," which comprises all of the States east of the Rocky Mountains and which is divided into eleven marketing divisions. Said marketing divisions, for the most part, extend over areas of several States and are further subdivided into districts.

During the years 1949 and 1950 respondent's sales of kerosene and fuel oils in said "Eastern Midcontinent Territory," were in excess of 8 per cent of total sales for the industry.

PAR. 4. Respondent, in the course and conduct of its said business, sells and distributes kerosene and fuel oils from various plants and storage terminals to customers and purchasers thereof in the several States of the United States and in the District of Columbia, causing the said products when sold to be transported from the places of pro-

duction and storage to customers and purchasers thereof located in States other than the State of origin of such shipments, and there is now, and has been for many years last past, a constant current of trade and commerce in said kerosene and fuel oils between and among the various States of the United States and in the District of Columbia.

PAR. 5. Except insofar as it is, has been, or may have been affected by the unlawful methods, acts and practices as hereinafter alleged, respondent is in substantial competition with various other persons, firms and corporations engaged in the production, sale and distribution of kerosene and fuel oils in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 6. Respondent, commencing sometime during the year 1951, or thereabout, adopted, put into effect and enforced a marketing plan whereby sales and contracts for the sale of its kerosene and fuel oils are made only on the conditions, understanding, and agreements that the purchasers thereof, shall not use, deal in, or resell the kerosene and fuel oils of a competitor or competitors of respondent. Said marketing plan is effectuated by sales contracts executed between respondent and independent dealers, and by other means, which require said dealers, among other things (1) to adopt and use the color scheme, trademark and trade name of respondent on all delivery equipment; (2) to refrain from selling and delivering kerosene and fuel oils other than respondent's under respondent's trade name; and (3) to purchase from respondent specified minimum quantities of kerosene and fuel oils. Said minimum quantities are based upon the independent dealer's total purchases of kerosene and fuel oils from all suppliers during the year preceding execution of the sales contract with respondent. Respondent has refused, and does now refuse, to sell kerosene and fuel oils to independent dealers who for various reasons are unwilling or unable to enter into said sales contracts with respondent and thereby handle and deal in respondent's kerosene and fuel oils exclusively.

PAR. 7. The capacity, tendency and effect of the aforesaid plan, sales contracts entered into, and the acts and practices in pursuance thereof may be (a) to prevent respondent's competitors from selling any kerosene and fuel oils to independent dealers who execute such sales contracts; (b) to preclude said dealers from all benefits of competition between respondent and others from whom they could purchase kerosene and fuel oils; and (c) to cut off a source of supply for independent dealers who are unwilling or unable to handle respondent's products exclusively.

PAR. 8. Furthermore, the effect of respondent's marketing plan and sales contracts made in pursuance thereof containing the afore-

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said conditions, agreements and understandings, may be to substantially lessen competition in the line of commerce in which the respondent is engaged and in the line of commerce in which the customers of respondent are engaged to tend to create a monopoly in respondent in the production, distribution and sale in commerce of kerosene and fuel oils.

CONCLUSION

The aforesaid acts of respondent constitute a violation of the provisions of Section 3 of the hereinabove-mentioned Act of Congress entitled an "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

ORDER

It is ordered, That the respondent, Shell Oil Company, a corporation, and all its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale or distribution of kerosene or fuel oils, for the purpose of resale, in commerce, as "commerce" is defined in the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, do forthwith cease and desist from:

1. Selling or making any contact for the sale of said products upon the condition, agreement, or understanding, express or implied, that the purchaser thereof purchase any one or all of said products exclusively from respondent.
2. Selling or making any contract for the sale of said products upon any condition which, directly or indirectly, obligates the purchaser thereof to refrain from dealing in the goods, wares, or merchandise of a competitor or competitors of respondent.
3. Refusing to sell, or refraining from selling, any amount or quantity of said products unless the purchaser thereof agrees to purchase any one or all of said products exclusively from respondent.
4. Refusing to sell, or refraining from selling, any amount or quantity of said products because the purchaser has failed to paint or keep painted in any particular manner his equipment.
5. Entering into, enforcing or continuing in operation or effect any condition, agreement, arrangement or understanding in, or in connection with, any existing or future sales contracts, which condition, agreement, arrangement or understanding is to the effect that the purchaser of said products shall not use or deal in the goods, wares or merchandise of a competitor or competitors of the respondent.

It is accordingly ordered, That the respondent, Shell Oil Company, shall within sixty (60) days after service upon it of this notice and order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the consent settlement entered herein.

APPROVED:

SHELL OIL COMPANY
By [sgd] W. F. KENNEY
Vice President and General Counsel.

SHELL OIL COMPANY
By [sgd] E. A. HUGILL, Jr.,
Attorney.

DATED: FEBRUARY 27, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and order entered of record on this the 17th day of March, 1953.

IN THE MATTER OF
ASHEVILLE FABRICS, INC. ET AL.

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

Docket 6002. Complaint, June 17, 1952—Decisions, Mar. 24, 1953

Rayon and acetate are chemically manufactured fibers, and fabrics manufactured therefrom are capable of being finished so as to simulate wool and other natural fibers in texture and appearance, and garments manufactured from fabrics composed of rayon and acetate are likewise capable of having the appearance and feel of wool, and many members of the purchasing public are unable to distinguish between such garments and those made from wool.

The term "worsted" means primarily and popularly a yarn or fabric made wholly of wool, the product of the fleece of the lamb or sheep, and there is a preference on the part of a substantial portion of the purchasing public for wearing apparel made from fabrics composed of wool or worsted, over wearing apparel made from other and non-wool fabrics, particularly those made to simulate wool or worsted.

Where a corporation engaged in converting, selling and distributing rayon and acetate fabrics simulating wool fabrics in appearance, which it sold principally to manufacturers of women's apparel, such as suits and skirts—

- (a) Distributed among prospective purchasers sample swatches of the fabrics to which were attached cards bearing the legend "Crush Resistant Suitings With That Worsted Texture";
- (b) Supplied its customers with tags reading in part "An Asheville Fabric with that Worsted Texture", which could be, and were, attached to finished garments manufactured by such customers and sold to retail stores; and
- (c) Failed to reveal on said cards or tags that the fabrics were made of rayon or acetate and contained no wool whatsoever, notwithstanding use of the term "worsted";

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the composition of said fabrics, and thereby into the purchase of substantial quantities of such garments; and with effect of placing in the hands of manufacturers and retailers a means to mislead and deceive said public:

Held, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

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

Mr. George E. Steinmetz for the Commission.

Conrad & Smith, of New York City, for respondents.