

Order

IN THE MATTER OF
THE KROGER CO.

Docket 5991. Complaint, May 14, 1952. Decision, Sept. 8, 1953

Charge: Knowingly receiving lower prices from sellers of grocery products of like grade and quality than said sellers charged respondent's competitors, in violation of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Edward S. Ragsdale, Mr. Rice E. Schrimsher and *Mr. Brockman Horne* for the Commission.

Arnold, Fortas & Porter, of Washington, D. C., for respondent.

DECISION OF THE COMMISSION

This matter coming on to be heard by the Commission upon its review of the hearing examiner's initial decision herein; and

The Commission having duly considered the entire record and being of the opinion that, although the hearing examiner in his initial decision did not accurately construe the admissions made by counsel supporting the complaint in their answer to respondent's motion to dismiss, the conclusion reached by him is correct, and that said initial decision is adequate and appropriate to dispose of this proceeding:

It is ordered, That the attached initial decision of the hearing examiner shall, on the 8th day of September, 1953, become the decision of the Commission.

Commissioner Howrey not participating.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

INITIAL DECISION BY WEBSTER BALLINGER, HEARING EXAMINER

The Federal Trade Commission on the 14th day of May 1952 issued its complaint in this proceeding charging respondent, The Kroger Co., with having violated the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C., Title 15, Sec. 13). Service being made, respondent answered and the case was, by order of the Commission, assigned to the undersigned duly appointed Hearing Examiner.

Respondent is engaged in the retail grocery business and maintains a large number of retail stores located in 19 States through which it

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sells to the public, in competition with other retail stores, a variety of grocery products, including food, food products and household supplies.

Prior to the receipt of evidence respondent, by motion in writing, moved to dismiss the complaint for failure to state a violation of law to which counsel for the complaint filed their written answer, oral argument being waived.

The complaint charges respondent with having knowingly received lower prices from sellers of grocery products of like grade and quality than said sellers charged respondent's competitors, in violation of subsection (f) of Section 2 of the Clayton Act, as amended. The answer to the motion to dismiss admits that in the light of the recent decision of the Supreme Court of the United States (June 8, 1953) in *Automatic Canteen Company v. F. T. C.* [346 U. S. 61; 49 F. T. C. 1763] this allegation is insufficient to constitute a violation of the statute.

To constitute a violation of subsection (f) of Section 2 of said Act it must be affirmatively alleged not only that respondent knowingly received such price differentials, but also knew that they were not within the defenses afforded the sellers by other provisions of Section 2 of said Act, particularly subsection (a), *Automatic Canteen Company, supra*.

No violation of subsection (f) of Section 2 of said Act being alleged in the complaint, it is by the Examiner this 23rd day of June 1953 ordered,

That respondent's motion to dismiss the complaint be, and it is hereby, granted, and the complaint dismissed without prejudice to the institution of further proceedings, should circumstances warrant.

Consent Settlement

IN THE MATTER OF

FRANK M. BUCKLEY TRADING AS FRANK M. BUCKLEY
COMPANY AND AS T. M. BUCKLEY COMPANYCONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE FED-
ERAL TRADE COMMISSION ACT AND THE WOOL PRODUCTS LABELING ACT*Docket 6098. Complaint, May 20, 1953—Decision, Sept. 8, 1953*

Where an individual engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

- (1) Misbranded certain batts or batting in that they were not stamped, tagged, etc., as required by said Act and the Rules and Regulations promulgated thereunder; and
- (2) Misbranded such products in that they were falsely described and identified in sales invoices, packing slips, and shipping memoranda as "New Wool, 100%" and as "Reused Wool, 100%", when in fact they contained reprocessed and reused wool together with substantial quantities of other fibers:

Held, That such acts and practices were in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

Mr. Fred L. Hoffstein, of Boston, Mass., for respondent.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on May 20, 1953 issued and subsequently served its complaint on the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices in violation of the provisions of said Acts.

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 purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and con-

¹The 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 September 8, 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.