

Complaint

IN THE MATTER OF

BRONCO MFG. CORP. AND MURRAY AND
PETER SPIEWAK

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

Docket 6217. Complaint, June 23, 1954—Decision, Oct. 28, 1954

Consent order requiring a New York City manufacturer of heavy outerwear to cease representing falsely by its use of color, style, markings, insignia, etc., that its United States Armed Forces type jackets were manufactured for the United States Armed Forces and in accordance with Armed Forces specifications.

Before *Mr. John Lewis*, hearing examiner.

Mr. Terral A. Jordan for the Commission.

Mr. Jules Goldstein, of New York City, 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 Bronco Mfg. Corp., a corporation, and Murray Spiewak and Peter Spiewak, 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 Bronco Mfg. Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 641 Sixth Avenue, New York, New York. Respondents Murray Spiewak and Peter Spiewak are respectively President and Secretary-Treasurer of said corporate respondent with their office and principal place of business located at the same address. These individuals acting in cooperation with each other formulate, direct and control all of the policies, acts and practices of said corporation.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the manufacture, sale and distribution of heavy outerwear, including imitation Armed Services type jackets, in commerce, among and between the various States of the United

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States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said garments, in commerce, among and between the various States of the United States.

PAR. 3. The garments manufactured, sold and distributed by respondents in the course and conduct of their business as aforesaid closely resemble the jackets and outer garments issued and furnished to members of the United States Armed Forces in color, pattern and style. Respondents also cause to be affixed to said garments certain markings, insignia, labels and tags which purport to designate the branch of service, model, contract number, specification number, stock number and directions as to the manner of use in substantially the same form, kind and manner as the markings, insignia, labels and tags prescribed and used by the United States Armed Forces on similar and like garments. Typical of the words and terms appearing on the markings, labels and tags are:

AIR PATROL

Spec. #BR-641

Order No. Q1079

JACKET, B-15 TYPE

This jacket increases greatly the warmth of clothing worn under it in cold and temperate climates because it is WINDPROOF.

USE: Sweat will chill you; therefore, when you start to get hot, open collar. If that is not enough, remove clothing worn underneath.

N-1

Type

B-15 TYPE

SPEC. #56478

STOCK #TL-19653

U. S. A.

Typical of insignia used on certain of said garments is that of the Army Air Forces, consisting of a five point star with two wings enclosed in a circle, under which the words "Army Air Forces" appear.

PAR. 4. Through the use of said colors, patterns and styles and the markings, insignia, labels and tags, as described in Paragraph 3 hereof, respondents have represented and implied and do represent and imply that said jackets and outer garments, manufactured, sold and distributed by them in commerce were manufactured for the United States Armed Forces and in accordance with specifications of said Armed Forces.

PAR. 5. Said representations and implications are false, misleading and deceptive. In truth and in fact, respondents' said garments were neither manufactured for the United States Armed Forces nor in accordance with specifications of said Armed Forces.

PAR. 6. By selling and distributing to wholesalers and dealers said products manufactured as aforesaid and having affixed to them the markings, insignia, tags and labels hereinabove described, respondents furnish to such wholesalers and dealers the means and instrumentalities through and by which they may mislead and deceive the purchasing public as to the origin, kind, type, and style of their said jackets and outer garments.

PAR. 7. In the course and conduct of their business respondents are in direct and substantial competition with other corporations and firms and individuals engaged in the sale in commerce of jackets and outer garments.

PAR. 8. The sale and distribution in commerce of said garments in the color, style, design and with markings, as hereinabove alleged, has had and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the belief that said garments were manufactured for the United States Armed Forces and in accordance with specifications of said Armed Forces. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and 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.

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 October 28, 1954, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 23, 1954, issued and subsequently served its complaint upon the respondents named in the cap-

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tion hereof, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of said Act. Thereafter, respondents appeared by counsel and entered into a stipulation for consent order, dated September 9, 1954. Said stipulation provides that the answer heretofore filed by respondents is withdrawn and expressly waives a hearing before a hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner or the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents consent in said stipulation to the entry of an order to cease and desist in the form therein provided for, which shall have the same force and effect as if made after full hearing, presentation of evidence, and findings and conclusions thereon, and respondents waive any and all right, power or privilege to challenge or contest the validity of said order. Said stipulation further provides that the signing thereof is for settlement purposes only and does not constitute an admission of violation by respondents, except that respondents admit all the jurisdictional allegations of the complaint.

The said stipulation having been submitted to the above-named hearing examiner, theretofore duly designated by the Commission, for his consideration in accordance with Rule V of the Commission's Rules of Practice, and it appearing that said stipulation provides for an appropriate disposition of this proceeding, the same is hereby accepted and ordered filed as part of the record herein by the hearing examiner who, after considering the complaint and said stipulation, finds that this proceeding is in the interest of the public and makes the following:

JURISDICTIONAL FINDINGS

PARAGRAPH 1. Respondent Bronco Mfg. Corp. is a corporation organized under and existing by virtue of the laws of the State of New York, with its office and principal place of business located at 641 Sixth Avenue, New York, New York. Respondents Murray Spiewak and Peter Spiewak are, respectively, President and Secretary-Treasurer of said corporate respondent. The address of the said individual respondents is the same as that of the said corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the manufacture, sale and distribution of heavy outer-wear garments, including various Armed Service type jackets, in commerce, among and between the various states of the United States and in the District of Columbia. Respondents main-

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tain, and at all times mentioned herein have maintained, a substantial course of trade in said garments, in commerce among and between the various states of the United States.

ORDER

It is ordered that respondents Bronco Mfg. Corp., a corporation, and Murray Spiewak and Peter Spiewak, individually and as officers of said corporate respondent and respondents' agents, representatives, and employees, directly or through any corporate or other device, in the offering for sale, sale or distribution of wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, or of any other garments, do forthwith cease and desist from representing, directly or by implication, by marking, branding, labeling, tagging, or in any other manner contrary to fact, that such merchandise was manufactured for the Armed Forces of the United States or in accordance with specifications of said Armed Forces.

ORDER TO FILE REPORT OF COMPLIANCE

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 [as required by said declaratory decision and order of October 28, 1954].

IN THE MATTER OF
LAFAYETTE FOODS, INC.

CONSENT ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. 2 (C)
OF THE CLAYTON ACT AS AMENDED

Docket 6223. Complaint, June 29, 1954—Decision, Oct. 28, 1954

Consent order requiring a wholesaler of food products in Lafayette, Ind., to cease accepting from sellers brokerage fees on purchases of frozen foods or other commodities for its own account or while acting as an intermediary for a buyer or subject to the buyer's control.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.

Stuart, Devol, Branigin & Ricks, of Lafayette, Ind., and *Winston, Strawn, Black & Towner*, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated, and is 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 Lafayette Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at Concord Road, Lafayette, Indiana. Respondent maintains branch offices at Chicago, Illinois, St. Louis, Missouri, and Indianapolis, Indiana.

PAR. 2. Respondent is a wholesaler of food products, who since October of 1945 has engaged in the purchase and sale of frozen foods, juices and canned goods, purchasing and selling substantial quantities of various types and varieties of frozen foods, juices and canned goods, including frozen vegetables, frozen fruits, frozen juices, frozen poultry, frozen fish, frozen meats, and some canned foods (all of which are hereinafter referred to as frozen foods).

Respondent in connection with its business also operates a wholly owned subsidiary, Continental Freezers, Inc., located at Lafayette, Indiana, which warehouses respondent's frozen foods.