

Complaint

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IN THE MATTER OF

FREDERICK C. BLOXOM, SR., ET AL.
TRADING AS F. C. BLOXOM & COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (c)
OF THE CLAYTON ACT*Docket 6259. Complaint, Nov. 4, 1954—Decision, Sept. 8, 1955*

Consent order requiring copartners engaged in Seattle, Wash., as brokers and as buyers of food products, to cease violating sec. 2 (c) of the Robinson-Patman Act by receiving commissions, brokerage, etc., from sellers on purchases of food products for their own account for resale.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

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

Bayley, Fite, Westburg, Madden & Goodin, of Seattle, Wash., 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, Section 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. Respondents Frederick C. Bloxom, Sr., Frederick C. Bloxom, Jr., and Kinne M. Hawes, individually and as copartners, trading as F. C. Bloxom & Company, have their offices and principal place of business located at 1105 Western Avenue, Seattle, Washington. Said respondents are engaged in the business of buying, selling and distributing fresh fruits and vegetables and other products (all of which are hereinafter referred to as food products).

Respondents' sales for the past several years have averaged from approximately \$1,500,000 to \$2,500,000 annually.

PAR. 2. The respondents, named in the caption hereof individually and as copartners, trading as F. C. Bloxom & Company, for a substantial period of time since January 1, 1942, have been engaged, and are now engaged, in the business of buying, selling, and distributing food products by two separate and distinct methods, namely and principally: (1) as brokers, and (2) as buyers.

First: Respondents' principal business as "brokers" of food products may be described as follows:

Respondents in such capacity act as sales agents negotiating the sale of food products for and on behalf of seller-principals and respondents' only compensation for such services is a commission or brokerage fee paid by such seller-principals. The respondents solicit and obtain orders from such food products at the respective seller-principals' prices and on such seller-principals' terms of sale. Respondents, as brokers, transmit purchase orders to their numerous seller-principals, who, thereafter, generally invoice and ship such food products directly to the seller-principals' customers, and collect the purchase price from such customers.

Respondents, as brokers of food products, have no financial interest in the food products they sell except the commissions or brokerage fees they receive and accept from their seller-principals for their services in making the sales. Such commissions or brokerage fees are customarily based on a percentage of invoice sales price of food products sold. The respondents, in this capacity, are brokers and not traders for profit. Respondents in such transactions do not take title to or have any financial interest in the food products sold, and neither make a profit nor suffer a loss on the transactions. This phase of respondents' business is not challenged by the complaint.

Second: Respondents' business as "buyers" of food products may be described as follows:

Respondents transmit their own purchase orders for food products directly to the various sellers from whom they buy. Such sellers invoice and ship such food products directly to respondents for respondents' account for resale.

The respondents, in connection with such purchases, are direct buyers, purchasing and reselling such food products, in their own name, and for their own account, at their own prices and on their own terms, taking title thereto, and assuming all the risks incident to ownership, and as such are traders for profit.

When the respondents sell such food products, they invoice the products to their customers in respondents' own trade name and for their own account and at prices and on terms respondents determine, either receiving a profit or accepting a loss thereon, as the case may be. Respondents receive, directly or indirectly, from the respective sellers from whom they purchase such food products for their own account, commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof.

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Respondents' business as "buyers" of food products for their own account on which they receive brokerage is challenged by the complaint herein.

PAR. 3. Respondents, for a substantial period of time since January 1, 1942, have made, and are now making, numerous and substantial purchases of food products from sellers located in States other than the State where respondents are located, and pursuant to said purchases, and respondents' directions, such food products were and are now being, shipped and transported in commerce by the various sellers thereof from the respective States in which such sellers are located across State lines, either to respondents, or pursuant to respondents' instructions, to the respective customers of respondents to whom such products were and are now being sold by respondents. Thus, there has been since January 1, 1942, and is now, a constant current of trade and commerce conducted by said respondents, in such food products, between and among the various States of the United States.

PAR. 4. Respondents, for a substantial period of time since January 1, 1942, and more particularly since January 1, 1950, in connection with the purchase of food products in commerce, as hereinabove alleged and described, have received and accepted, and are now receiving and accepting, directly or indirectly, commissions, brokerage or other compensation, or allowances or discounts in lieu thereof, from some, but not all of the various sellers from whom they purchase food products, in commerce for their own account for resale, usually in the manner and under the circumstances set out in the "SECOND" or last part of Paragraph Two above.

PAR. 5. The foregoing acts and practices of the respondents, directly or indirectly, since January 1, 1942, and more particularly since January 1, 1950, in receiving and accepting commissions, brokerage, or other compensation or allowances or discounts in lieu thereof from various sellers in connection with their purchase of food products in commerce are in violation of subsection (c) of Section 2 of the Clayton Act as amended.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On November 4, 1954, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936, by receiving and accepting, directly or indirectly, commissions, brokerage or other compensation, or allowances or discounts in lieu thereof, from some,

but not all of the various sellers from whom they purchase food products in commerce for their own account for resale.

Thereafter, on December 1, 1954, Respondents filed with the Commission their Answer to said complaint, and on July 11, 1955, entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the hearing examiner a Stipulation For Consent Order disposing of all the issues involved in this proceeding.

Respondents are identified in the stipulation as individuals and as copartners trading as F. C. Bloxom & Company, with their office and principal place of business located at 1105 Western Avenue, Seattle, Washington, and it is recited in such identification that Respondent Frederick C. Bloxom, Sr., died prior to the service of the complaint herein.

Respondents admit all the jurisdictional allegations set forth in the complaint, and stipulate that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance therewith.

All parties request the withdrawal of Respondents' Answer, filed herein on December 1, 1954, and for all legal purposes said answer will hereafter be regarded as withdrawn. All parties expressly waive the filing of answer; 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 and the Commission to which Respondents may be entitled under the Clayton Act, as amended, or the Rules of Practice of the Commission. Respondents agree that the order contained in the stipulation shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon. Respondents specifically waive any and all right, power or privilege to challenge or contest the validity of such order.

It is also agreed that said Stipulation For Consent Order, together with the complaint, shall constitute the entire record in this proceeding, upon which the initial decision shall be based. The stipulation sets forth that the complaint herein may be used in construing the terms of the aforesaid order, which may be altered, modified, or set aside in the manner provided by statute for orders of the Commission.

The stipulation further provides that the signing of the Stipulation For Consent Order is for settlement purposes only, and does not constitute an admission by Respondents of any violation of law alleged in the complaint.

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In view of the facts outlined above, and the further fact that the order embodied in the aforesaid stipulation is identical with the order accompanying the complaint except for the omission therefrom of the name of Frederick C. Bloxom, Sr., deceased, as to whom the complaint herein will, of course, be dismissed, it appears that such order will safeguard the public interest to the same extent as could be accomplished by the issuance of an order after full hearing and all other adjudicative procedure waived in said stipulation. Accordingly, in consonance with the terms of the aforesaid stipulation, the hearing examiner accepts the Stipulation For Consent Order submitted herein; finds that this proceeding is in the public interest; and issues the following order:

It is ordered, That Respondents Frederick C. Bloxom, Jr., and Kinne M. Hawes, individually or as copartners, trading as F. C. Bloxom & Company, or under any other name, their respective representatives, agents and employees, in connection with the purchase of food products or other commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of food products, or other commodity, made for their own account or where the Respondents Frederick C. Bloxom, Jr., and Kinne M. Hawes, individually or as copartners, trading as F. C. Bloxom & Company, or under any other name, are the agents, representatives, or other intermediaries acting for, or in behalf of, or subject to the direct or indirect control of any buyer.

It is further ordered, That the complaint herein, insofar as it relates to Respondent Frederick C. Bloxom, Sr., deceased, be, and the same hereby is, dismissed.

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 8th day of September 1955, become the decision of the Commission; and, accordingly:

It is ordered, That Respondents Frederick C. Bloxom, Jr., and Kinne M. Hawes, individually and as copartners trading as F. C. Bloxom & Company, 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.

Complaint

IN THE MATTER OF

T. F. DENMAN TRADING AS THE FUR DOCTOR

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6298. Complaint, Feb. 25, 1955—Decision, Sept. 8, 1955

Consent order requiring a furrier in San Francisco, Calif., to cease violating the Fur Products Labeling Act by labeling, invoicing, and newspaper advertising which named other animals than those producing the fur in certain fur products or failed to name any animal or the country of origin of imported furs, and failed in other respects to conform to requirements of the Act.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. John T. Walker and *Mr. Edward F. Downs* for the Commission.

Mr. Ralph Leon Isaacs, of San Francisco, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that T. F. Denman, an individual trading as The Fur Doctor, hereinafter referred to as respondent, has violated the provisions of said Acts, and the Rules and Regulations promulgated under the Fur Products Labeling 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 T. F. Denman is an individual trading as The Fur Doctor, with his principal place of business located at 1521 Market Street, San Francisco, California.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been, and is now, engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce of fur products, and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act.