

Complaint

IN THE MATTER OF

AMERICAN WHOLESALE FURNITURE COMPANY ET AL.

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

Docket 6258. Complaint, Nov. 3, 1954—Decision, Oct. 4, 1955

Consent order requiring dealers in Chicago to cease using the word "Wholesale" in their corporate name and representing falsely thereby that their merchandise, including furniture, rugs, appliances, and luggage, was sold to the general public at wholesale prices.

Before *Mr. Loren H. Laughlin*, hearing examiner.

Mr. William R. Tincher for the Commission.

Mr. Julius J. Schwartz, of Chicago, Ill., 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 American Wholesale Furniture Company, a corporation, and Peter K. Barskis and Eleanora Barskis, 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, American Wholesale Furniture Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 916 South Wabash Avenue, Chicago 5, Illinois. The individual respondents, Peter K. Barskis and Eleanora Barskis, are President and Secretary-Treasurer, respectively, of the corporate respondent. These individuals formulate, control and direct the practices and policies of said corporate respondent. Said individual respondents have their offices at the same place as the corporate respondent.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the business of offering for sale and selling furniture, rugs, appliances, luggage and other merchandise. A substantial percentage of such sales are made to members of the general public.

Complaint

52 F. T. C.

PAR. 3. In the course and conduct of their business, respondents cause and have caused substantial quantities of their merchandise, when sold to the aforesaid class of customers, to be transported from their place of business in the State of Illinois to the purchasers thereof located in various other States and maintain and have maintained a course of trade in their merchandise, with such customers, in commerce, among and between various States of the United States.

PAR. 4. In the conduct of their aforesaid business, respondents use and have used the name of the corporate respondent, American Wholesale Furniture Company, in radio broadcasts and in and on form letters, circulars, folders, invoices and cards designated as "Buyer's Pass," all of which have been and are circulated among or supplied to the aforesaid class of prospective purchasers.

PAR. 5. Through the use of the word "Wholesale" in and as a part of said corporate name, respondents represent, and have represented, that they operate as a wholesaler in dealing with the general public and that their merchandise is offered for sale and sold to members of the general public at wholesale prices.

PAR. 6. Said representation is and was false, misleading and deceptive. In truth and in fact, respondents do not operate as a wholesaler in dealing with the general public and the prices at which their merchandise is offered for sale and sold to the general public are not wholesale prices but are substantially greater than wholesale prices.

PAR. 7. Respondents are in direct and substantial competition with other corporations and with individuals and firms likewise engaged in the sale of merchandise of the same kind to the general public, in commerce, between and among various States of the United States.

PAR. 8. The use by respondents, as aforesaid, of the false, misleading and deceptive statement and representation has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statement and representation was and is true and to induce the purchase of respondents' merchandise as a result of such erroneous and mistaken belief. As a consequence, trade in commerce has been unfairly diverted to respondents from their competitors and injury has been and is being done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are and were 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.

INITIAL DECISION AND ORDER BY LOREN H. LAUGHLIN, HEARING EXAMINER

Counsel supporting the complaint, and the attorney of record for respondents on August 5, 1955, submitted to the hearing examiner for his approval an agreement for consent order, including a proposed order, which will result in a just disposition of all of the issues involved in this proceeding. Such document has been properly executed by counsel supporting the complaint, by the respondent American Wholesale Furniture Company, a corporation, by its President, Peter K. Barskis, by the individual respondents, Peter K. Barskis, and Eleanor Barskis, and also by the attorney of record for all respondents. Said agreement bears date of July 28, 1955, and has been approved by the Director of the Commission's Bureau of Litigation.

Upon due consideration of said agreement, the proposed order contained therein, and the complaint, the undersigned hearing examiner finds that said agreement has been properly prepared, approved, and submitted to him for his consideration and approval in accordance with the requirements of Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, effective on and after May 21, 1955.

The hearing examiner specially finds that by the terms of said agreement:

All parties have agreed that a true copy of the complaint issued against the respondents on November 3, 1954, was thereafter duly served by registered mail on each of the respondents; that the respondent American Wholesale Furniture Company is a corporation organized, existing and having its principal place of business as alleged in the complaint and that the individual respondents are officers of said corporation and that they also have the same principal office and place of business as said corporation.

Respondents have admitted all the jurisdictional allegations set forth in the complaint and have agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.

All parties have agreed that this agreement is for settlement purposes only and does not constitute an admission by the respondents that they have engaged in any method, act or practice violative of law.

All parties have expressly waived 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 ex-

Order

52 F. T. C.

aminer and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

Respondents have further agreed that the proposed order therein provided for shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereof, and specifically waive any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with said agreement.

All parties have further agreed that said agreement, together with the complaint, shall constitute the entire record herein and shall be filed with the hearing examiner for his consideration in accordance with Section 3.21 of the Commission's Rules of Practice for Adjudicative Proceedings; that the complaint may be used in construing the terms of the proposed order which may be altered, modified or set aside in the manner provided by statute for the orders of the Commission; and that the proposed order may be entered upon the said record without further notice.

The hearing examiner further finds from the complaint and said agreement that the Commission has jurisdiction over the person of each and all of the respondents and that it has jurisdiction over the subject matter of this proceeding under the Federal Trade Commission Act; that the complaint alleges acts of respondents which have been and are violative of the provisions of the Federal Trade Commission Act; that this proceeding is to the interest of the public; that the proposed order conforms substantially to and does not depart in any major respect from the order contained in the "Notice" portion of the complaint, the form of said proposed order having been slightly revised in order to more explicitly reflect the intent and meaning of the original order, and such proposed order is fully appropriate and adequate for the prompt and complete disposition of this proceeding.

The agreement for Consent Order is therefore accepted by the hearing examiner and ordered placed on file, but neither it nor this initial decision and order shall become part of the official record of this proceeding or be published unless, and until, this initial decision and order are approved by the Commission and become final and a part of its official decision and order in this proceeding.

ORDER

It is ordered, That respondents, American Wholesale Furniture Company, a corporation, and its officers, and Peter K. Barskis and

359

Decision

Eleanora Barskis, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any other corporate or other device, in connection with the offering for sale, sale or distribution of merchandise to the general public, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "wholesale" or any other word or words of similar import as a part of any corporate or trade name, or representing in any manner, directly or indirectly, that they operate as a wholesaler.

2. Representing that the prices at which they offer to sell or sell their merchandise are wholesale prices.

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 did, on the 4th day of October, 1955, become the decision of the Commission; and, accordingly:

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.

Complaint

52 F. T. C.

IN THE MATTER OF
FUELGAS CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF
THE CLAYTON ACT AND THE FEDERAL TRADE COMMISSION ACT

Docket 6362. Complaint, June 7, 1955—Decision, Oct. 6, 1955

Consent order requiring a corporation with main office at Chester, N. Y., and branch offices in Pennsylvania and New Jersey, to cease selling liquefied petroleum gas, its "Homgas" steel containers for storage and transportation thereof, gas service equipment, and gas burning appliances, and leasing of its said steel containers and gas service equipment on condition that the purchaser-distributor or lessee not use or deal in competitors' goods; and to cease threatening to cancel, and actually canceling, distributors' contracts and otherwise intimidating distributors unless they rigidly adhered to such exclusive-dealing contracts.

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

Mr. Andrew C. Goodhope for the Commission.

Levine & Levine, of Hurleyville, N. Y., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress commonly known as the Clayton Act, the Federal Trade Commission having reason to believe that Fuelgas Corporation, a corporation, Morris Birnbaum and Daniel Birnbaum, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of Section 3 of said Act (15 U.S.C.A. Sec. 14), and pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission having reason to believe that said respondents have violated the provisions of Section 5 of said Act (15 U.S.C.A. Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges as follows:

COUNT I

PARAGRAPH 1. Respondent Fuelgas Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business located at Chester, New York, with branches located at Moosic, Pennsylvania; Frackville, Pennsylvania; Honesdale, Pennsylvania; and Clinton, New Jersey.