

Complaint

52 F. T. C.

IN THE MATTER OF
CALLAWAY MILLS COMPANY ET AL.

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

Docket 6352. Complaint, May 16, 1955—Decision, Dec. 8, 1955

Consent order requiring the nation's largest manufacturer of industrial wiping cloths and its corporate sales subsidiary, which had sales in 1953 approximating \$8,000,000, to cease violating Sec. 3 of the Clayton Act through selling their products, including the trade-marked cloth "Kex", to some 110 large industrial laundries, which rented them to industrial concerns for wiping grease, dirt, etc., from machinery and tools, on condition that they not deal in competitive products.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Andrew C. Goodhope for the Commission.

Cann, Lamb, Long & Kittelle, of Washington, D. C., 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 Callaway Mills Company, a corporation, and Callaway Mills, Inc., a corporation (hereinafter called respondents) have violated the provisions of Section 3 of the Clayton Act (15 U.S.C.A. sec. 14), the Commission hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Callaway Mills Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, having its principal office and place of business located at LaGrange, Georgia, with thirteen cotton milling factories located in the State of Georgia.

Respondent Callaway Mills, Inc., is a corporation 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 at 295 Fifth Avenue, New York, New York. Respondent Callaway Mills, Inc., is a wholly owned subsidiary of respondent Callaway Mills Company and has branch offices located at Akron, Ohio; Boston, Massachusetts; Atlanta, Georgia; Detroit, Michigan; Seattle, Washington; St. Louis, Missouri; Baltimore, Maryland; and Los Angeles, California.

PAR. 2. Respondent Callaway Mills Company is now and for many years has been engaged in the manufacturing, milling, processing,

sale and distribution of a large number of cotton products. Included among such products is a product, made from cotton, commonly called industrial wiping cloths. These cloths are made from woven or knitted cloth and are intended for wiping purposes by industrial, commercial or service users, and are cut to uniform size or sizes and have bound edges or selvage edges. The majority of respondents' industrial wiping cloths are sold under the trade name of "Kex" and are nationally advertised and enjoy wide sales throughout the various States of the United States and the respondents are the dominant manufacturer and seller of such industrial wiping cloths in the United States; respondents' sales of such industrial wiping cloths for the year 1953 were approximately \$8,000,000.00

Respondent Callaway Mills, Inc., is the sales agent selling all of respondent Callaway Mills Company's products, including industrial wiping cloths, throughout the United States and in the District of Columbia and has directly participated in all of the acts and practices mentioned herein.

PAR. 3. Respondents now sell and distribute and for many years have been selling and distributing their industrial wiping cloths to approximately 110 large industrial laundries located throughout the States of the United States and in the District of Columbia. The respondents cause such products, when sold by them, to be transported from the place of manufacture in the State of Georgia to purchasers thereof located in States other than the place of manufacture or sale. There is now and has been for many years a constant current of trade in commerce in respondents' said products between and among the various States of the United States and in the District of Columbia.

PAR. 4. The large industrial laundries to whom the respondents sell their industrial wiping cloths are independent business operations which in turn rent such industrial wiping cloths to a variety of industrial concerns for use by them. Among such uses are the wiping of grease, dirt, ink, dust, or other filth from all types of machinery and tools. The industrial laundries collect such industrial wiping cloths after they have become soiled by use, launder and re-rent such cloths during their useful life. The industrial laundries do not resell such cloths but rent such cloths to users.

PAR. 5. In the course and conduct of their business, as herein described, respondents have been in competition in the manufacture, sale and distribution of industrial wiping cloths in commerce between and among the various States of the United States and the District of Columbia with other corporations, persons, firms and partnerships.

PAR. 6. In the course and conduct of their business in commerce, above described, the respondents have made sales and contracts for

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sale of their industrial wiping cloths and are still making such sales and contracts for sale on the condition, agreement or understanding that the purchasers thereof shall not use or deal in the industrial wiping cloths or other similar supplies or commodities of a competitor or competitors of the respondents.

The respondents have entered into such contracts for sale with approximately 110 industrial laundries located throughout the United States. Typical of such contract provisions are those contained, among others, in the respondents' "Kex License Agreement" pursuant to the terms of which the respondents have contracted to sell their products to such industrial laundries, as follows:

2. Licensee will furnish, promote, develop and expand said rental service in said territory, and will use and publish said name and label on and in connection with, and only on and in connection with, industrial wiping cloths manufactured or supplied by the Company and rented to customers of Licensee located within said territory. Licensee shall not without prior written consent of the Company, within the said territory and during the term of this agreement, rent industrial wiping cloths other than "Kex" cloths. Nothing in this agreement shall prevent Licensee from purchasing industrial wiping cloths from a source other than the Company at any time the Company is unable to make deliveries in the quantities and at the times required nor to prevent Licensee from purchasing a special type or types of industrial wiping cloth(s) from a source other than the company if such special type or types are not made available by the Company after reasonable notice to the Company of such Licensee's need for such special type(s).

3. Licensee will purchase from the Company, at the prevailing prices and terms fixed by the Company from time to time, the industrial wiping cloths required by Licensee to furnish said rental service.

4. Licensee shall not sell any serviceable cloth so long as said name or label appears thereon or is attached thereto, except to the Company or except in connection with a sale of Licensee's business hereinafter provided.

PAR. 7. The industrial laundries with whom respondents have entered into the contracts of sale described in Paragraph Six are a large and substantial market for such industrial wiping cloths. Sales by respondents to such customers pursuant to the contract terms described above in Paragraph Six for the year 1953 were approximately \$8,000,000.00. Competitors of respondents have been, and are now, unable to make sales of similar products to those sold by respondents to respondents' customers which could have been made but for conditions, agreements and understandings with such customers described above in Paragraph Five.

PAR. 8. The effect of such sales and contracts of sales upon such conditions, agreements and understandings, may be to substantially lessen competition in the line of commerce in which the respondents are engaged and in the line of commerce in which the customers and

purchasers of respondents are engaged; and may be to tend to create a monopoly in the respondents in the line of commerce in which the respondents have been and are now engaged.

PAR. 9. The aforesaid acts and practices of respondents constitute a violation of the provisions of Section 3 of the Clayton Act.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 16, 1955, charging them with having violated Section 3 of the Clayton Act. In lieu of submitting answer to said complaint, respondents entered into an agreement for consent order with counsel supporting the complaint, disposing of all the issues in this proceeding, which agreement has been duly approved by the Director of the Bureau of Litigation.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The agreement further provided that the order contained therein may be entered in this proceeding by the Commission without further notice to respondents and, when so entered, it shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said

agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Callaway Mills Company is a corporation existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at LaGrange, Georgia.

Respondent Callaway Mills, Inc., is a corporation 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 295 Fifth Avenue, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under Section 3 of the Clayton Act.

ORDER

It is ordered, That the respondents, Callaway Mills Company, a corporation, and Callaway Mills, Inc., a corporation, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of industrial wiping cloths and other similar or related products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(1) Selling or making any contract or agreement for the sale of any such products on the condition, agreement or understanding that the purchaser thereof shall not use or deal in industrial wiping cloths or other similar or related products supplied by any competitor or competitors of respondents;

(2) Enforcing, or continuing in operation or effect, any condition, agreement or understanding in or in connection with any contract of sale, which condition, agreement, or understanding is to the effect that the purchasers of said products shall not use or deal in industrial wiping cloths or other similar or related products supplied by any competitor or competitors of respondents.

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 December, 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.

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IN THE MATTER OF
WEINSTEIN FUR COMPANY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 6415. Complaint, Sept. 20, 1955—Decision, Dec. 8, 1955*

Consent order requiring a furrier in Union City, N. J., to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, and the fact that fur products were composed of bleached, dyed, or otherwise artificially colored fur; and which misrepresented geographical origin of furs, prices, and value of fur products, and products as being from the stock of a liquidating business, among other things.

Before *Mr. Frank Hier*, hearing examiner.

Mr. John J. McNally for the Commission.

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 Weinstein Fur Company, a corporation, and Stanley W. Weinstein, individually and as Secretary and Manager of said corporation, hereinafter referred to as respondents, have 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 Weinstein Fur Company is a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at 4522 Bergenline Avenue, Union City, New Jersey. Individual respondent Stanley W. Weinstein is Secretary and Manager of said corporate respondent and formulates, directs and controls the acts and practices of said corporate respondent. Said individual respondent has the same office and principal place of business as corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the respondents have 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