

Opinion

IN THE MATTER OF
THE YALE & TOWNE MANUFACTURING COMPANY

Docket 6232. Order and opinion, May 1, 1956

Interlocutory order denying joint petition by respondents in separate proceedings for leave to intervene for filing brief amicus curiae and to participate in oral argument.

Before *Mr. Frank Hier*, hearing examiner.

Mr. William H. Smith and *Mr. Brockman Horne* for the Commission.

Milbank, Tweed, Hope & Hadley, of New York City, for The Yale & Towne Manufacturing Co.

Kirkland, Fleming, Green, Martin & Ellis, of Washington, D. C., for Clark Equipment Co.

Brown, Lund & Fitzgerald, of Washington, D. C., for Lewis-Shepard Co.

McBride & Baker, of Chicago, Ill., for Hyster Co.

Stage & Butler, of Cleveland, Ohio, for The Elwell Parker Electric Co.

Mr. Fayette S. Dunn, of New York City, for Otis Elevator Co.

ORDER DENYING PETITION FOR LEAVE TO INTERVENE

A joint petition having been filed by Clark Equipment Company, Lewis-Shepard Company, Hyster Company, The Elwell Parker Electric Company, and Otis Elevator Company, for leave to intervene in this proceeding for the purpose of filing a brief amicus curiae and participating in oral argument before the Commission on appeal of counsel in support of the complaint from the initial decision of the hearing examiner; and

The Commission having determined, for the reasons set forth in the accompanying opinion, that the request should not be allowed:

It is ordered, That the aforesaid joint petition for leave to intervene be, and it hereby is, denied.

Commissioner Mason dissenting and Commissioner Gwynne not participating.

ON APPLICATION FOR LEAVE TO INTERVENE

Per Curiam:

This matter is before the Commission upon a joint petition, filed by counsel for Clark Equipment Company, Lewis-Shepard Company, Hyster Company, The Elwell Parker Electric Company and Otis

Elevator Company, requesting leave to intervene in this proceeding to the extent of filing a joint brief *amicus curiae* and of jointly presenting oral argument. The petition is unopposed by counsel for the respondent, but is vigorously opposed by counsel supporting the complaint.

The complaint charged respondent with violation of Subsection (a) of Section 2 of the Clayton Act, as amended. Hearings were held, and on November 18, 1955, the hearing examiner filed an initial decision granting respondent's motion to dismiss. Counsel supporting complaint has appealed from the initial decision and the matter has been scheduled for oral argument on May 3, 1956.

To support their request for leave to intervene, petitioners assert (1) that they are directly affected by the appeal, and (2) that they plan to present arguments beyond the issues raised in the appeal brief. Counsel supporting the complaint opposes intervention on the grounds that the petition was not timely filed which thereby renders it impossible for him, for lack of time, to make an adequate answer to the questions presented, and that the petition and brief are not proper because petitioners do not appear as "friends of the court", but to litigate, if they can, in the instant matter, the legality of their own cumulative discount systems, concerning which complaints have issued against all five of the petitioners.

In a proceeding by the Commission under Section 2 and other sections of the Clayton Act, as amended, Section 11 of that Act provides that any person may make application, and "upon good cause shown" may be allowed by the Commission to intervene and appear in said proceeding. Likewise, under § 3.11 of the Commission's Rules of Practice intervention may be allowed and the opportunity may be afforded of filing an appropriate brief as *amicus curiae*. Intervention, however, under both the statute and the rule, is at the discretion of the Commission.

In supporting their petition to intervene on the ground that they are directly affected by the appeal in this proceeding, petitioners state that they have voluntarily abandoned their own cumulative quantity discounts and that, therefore, they should not become the subjects of further adversary proceedings if the instant appeal is decided adversely to the position of counsel supporting the complaint. They further state that they desire to intervene before the Commission in order to vindicate their cumulative discounts which have been the subject of complaints in separate proceedings. Petitioners argue, in effect, that the matters in which they are respondents can be settled by the decision on this appeal. That is not the case. The complaints which have issued against the petitioners have not been made a part

of the record in this proceeding. These are separate matters which have not yet proceeded to hearing, and when they do, each will be heard and decided on its individual facts and merits. Moreover, the issue of abandonment sought to be raised by the petitioners is not even involved in this appeal. It necessarily follows that petitioners are not directly affected by this appeal, and a decision of the instant matter will not affect their rights.

As a further ground for intervention, petitioners have asserted that inasmuch as respondent is limited in its answering brief to questions raised in the appeal brief, and may not cover some arguments which they deem essential to the full and speedy disposition of, what they term, these controversies, they plan to present arguments beyond those of the respondent. It is apparent to the Commission that, in this assertion, petitioners make reference to the disposition of their own proceedings, as well as the instant matter, but this appeal has no direct reference to the other proceedings. Furthermore, to permit presentation of argument on questions not raised in the appeal brief would place an unjustified and unreasonable burden on counsel supporting the complaint. Under § 3.22 (c) of the Commission's Rules of Practice, the respondent's answering brief is limited to questions raised in the appeal brief, and to now require counsel to prepare for questions not so raised would not only put him at a disadvantage but would leave him without time to make adequate preparation, with further delay in the proceeding not justified.

The joint petition for leave to intervene for filing a brief *amicus curiae* and to participate in oral argument will be denied and an appropriate order will be entered.

Commissioner Mason dissented to the decision herein and Commissioner Gwynne did not participate in the decision herein.

Complaint

52 F. T. C.

IN THE MATTER OF

JOSEPH GRAIS ET AL. TRADING AS
RUBIN GRAIS & SONSCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS*Docket 6488. Complaint, Jan. 11, 1956—Decision, May 1, 1956*

Consent order requiring five copartners to cease violating the Wool Products Labeling Act through tagging boys' jackets falsely with respect to the character and amount of constituent fibers contained in the fabrics composing them, and through failing to label wool products as required.

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

Mr. Floyd O. Collins for the Commission.

Brown, Fox & Blumberg, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the Authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Joseph Grais, Edward Grais, Benjamin Grais, Rubin Grais and Lyllian Braun, individually and as copartners, trading and doing business as Rubin Grais & Sons, hereinafter referred to as respondents, have violated provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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. Respondents Joseph Grais, Edward Grais, Benjamin Grais, Rubin Grais and Lyllian Braun are individuals and copartners trading and doing business under the firm name of Rubin Grais & Sons with their office and principal place of business located at 325 South Wacker Drive, Chicago, Illinois. These individual respondents formulate, direct and control the acts, practices and policies of the said business.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act and more especially since January, 1952, respondents have manufactured for introduction into commerce, introduced, sold, transported and distributed, delivered for shipment and offered for sale in commerce as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.