

Order

52 F. T. C.

IN THE MATTER OF
FOREMOST DAIRIES, INC.

Docket 6495. Order, June 4, 1956

Order holding that violation of sec. 7, Clayton Act, may also be violation of sec. 5, Federal Trade Commission Act, and reversing hearing examiner's ruling striking from the complaint allegations charging violation of sec. 5 through corporate acquisitions.

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

Mr. Raymond L. Hays, *Mr. Bernard M. Williamson* and *Mr. F. P. Favarella* for the Commission.

Camilier, McDonald & Bakke, and *Mr. Robert E. Freer*, of Washington, D. C., and *Milam, Lemaistre, Ramsey & Martin*, of Jacksonville, Fla., for respondent.

ORDER SUSTAINING APPEAL OF COUNSEL IN SUPPORT OF COMPLAINT
AND REVERSING RULING OF HEARING EXAMINER

This matter having come on to be heard by the Commission upon an appeal, filed by counsel in support of the complaint, from a ruling of the hearing examiner striking from the complaint certain allegations charging the respondent with having violated Section 5 of the Federal Trade Commission Act through the acquisition of a number of corporations and other concerns engaged in the processing and distribution of dairy products; and

It appearing that the basis of the ruling appealed from was the hearing examiner's view that Congress in treating the subject of corporate acquisitions in Section 7 of the Clayton Act, as amended, intended to and did preclude the application of Section 5 of the Federal Trade Commission Act to this field of activity; and

The Commission being of the opinion that the hearing examiner was in error in this respect and that facts indicating a violation of Section 7 of the Clayton Act, as amended, may also indicate a violation of Section 5 of the Federal Trade Commission Act, and, further, that practices not technically within the scope of a specific section of the Clayton Act may nevertheless constitute a violation of Section 5 of the Federal Trade Commission Act; and

The Commission being of the further opinion that in electing to charge the respondent in this case with violation of both Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act the Commission acted in the exercise of its admini-

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strative discretion and that in so doing it made a decision on which the hearing examiner has no authority to sit in judgment:

It is ordered, That the appeal of counsel in support of the complaint be, and it hereby is, sustained.

It is further ordered, That the ruling of the hearing examiner striking from the complaint the allegations charging the respondent with having violated Section 5 of the Federal Trade Commission Act be, and it hereby is, reversed.

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IN THE MATTER OF
REDDI-SPRED CORPORATION

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

Docket 6228. Order, June 5, 1956

Order modifying prior cease and desist order issued May 5, 1955 (51 F. T. C. 1074), to conform to the order of the Court of Appeals, Third Circuit, of January 18, 1956, by striking out the latter part of the proviso under paragraph "1" so that the proviso as modified reads: "*Provided, however, that nothing contained in this order shall prevent the use in advertisements of a truthful, accurate and full statement of all of the ingredients contained in said product.*"

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

Mr. William L. Pencke for the Commission.

Duane, Morris & Heckscher, of Philadelphia, Pa., for respondent.

Mr. M. R. Garstang, of Washington, D. C., for National Milk Producers Federation, *amicus curiae*.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondent, testimony and other evidence in support of and in opposition to the allegations of the aforesaid complaint taken before the hearing examiner of the Commission theretofore duly designated by it; and the hearing examiner having thereafter filed his initial decision dismissing the complaint; and the matter having thereafter come on to be heard by the Commission upon appeal from said initial decision filed by counsel supporting the complaint, briefs in support of and in opposition to said appeal, and oral argument of counsel; and the Commission having duly considered and ruled upon said appeal, considered the record, and having determined that the hearing examiner had erroneously dismissed the complaint, reviewed and set aside the initial decision and made its findings as to the facts, concluded that respondent had violated the provisions of the Federal Trade Commission Act, and, on the 5th day of May 1955, issued an order to cease and desist against the said respondent and its officers, agents, representatives, and employees; and

Respondent having filed in the United States Court of Appeals for the Third Circuit its petition for review and to set aside said order to cease and desist; and that Court having heard the cause on briefs and

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oral argument and having thereafter, on the 18th day of January 1956, filed its decision modifying said order and affirming said order as modified, and, on the 8th day of February 1956, entered its final decree enforcing said order as modified; and

The Commission being of the opinion that its aforesaid order to cease and desist should be modified so as to accord with the aforesaid judgment of the United States Court of Appeals for the Third Circuit:

It is ordered, That respondent Reddi-Spred Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of oleomargarine or margarine do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any statement, word, grade designation, design, device, symbol, sound or any combination thereof which represents or suggests that said product is a dairy product;

Provided, however, That nothing contained in this order shall prevent the use of advertisements of a truthful, accurate and full statement of all of the ingredients contained in said product.

2. Disseminating or causing to be disseminated by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act of said product any advertisement which contains any of the representations prohibited in paragraph one of this order.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
ROCKY MOUNTAIN WHOLESALE COMPANY ET AL.
ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (c) OF THE
CLAYTON ACT

Docket 6230. Complaint, June 30, 1954—Decision, June 7, 1956

Order requiring a wholesaler of sundries, candy, and tobacco products in Albuquerque, New Mexico, to cease receiving unlawful allowances or brokerage in violation of Sec. 2 (c) of the Clayton Act as amended, through sharing, as partner in two brokerage companies, brokerage received by them on purchases made for respondent's own account.

Mr. Rice E. Schrimsher and *Mr. Peter J. Dias* for the Commission.
Mr. Louis C. Lujan, of Albuquerque, N. Mex., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents charging them with violating Section 2 (c) of the Clayton Act, (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, which complaint was duly served upon the respondents. The respondent, Jack Beatty was named as such in his individual capacity as well also as President of the corporate respondent, and owner of the controlling interest thereof, and as a partner in the partnership firms of Consolidated Brokerage Company and G & Z Brokerage Company. No testimony or other evidence was received on behalf of any party to this proceeding, this Initial Decision being rendered upon motion of the attorneys in support of the complaint on the basis of admissions contained in the formal answer of respondents to the complaint herein. Specifically, the respondents Rocky Mountain Wholesale Company and Jack Beatty are charged with receiving and accepting payment of commissions in lieu of brokerage in connection with purchases of products made by them for their own account.

On August 2, 1954, respondents filed answer to the complaint admitting:

1. The status of the corporate respondent and the representative and individual connections of the individual respondent, as alleged in the complaint;
2. Interstate commerce; and
3. The payment and acceptance by respondents of brokerage, or other compensation in lieu thereof, in connection with purchases of products made by the respondents on their own account.