

Decision

IN THE MATTER OF

PARLIAMENT APPLIANCES, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6563. Complaint, June 7, 1956—Decision, Mar. 5, 1957*

Consent order requiring a Chicago seller to cease advertising falsely in connection with its home freezers and freezer food purchasing plan, that sale of the freezers was incidental to its wholesale food business, that it had a food plant, bought food by the carload for resale at wholesale prices to participants in the "plan" who could thus effect large savings, and that the freezer was given free at the end of a two-year period of participation, among other things.

Mr. Floyd O. Collins for the Commission.

Mr. Lewis W. Schlifkin, of Chicago, Ill., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued June 7, 1956, charges the respondents Parliament Appliances, Inc., a corporation trading as Parliament Food Plan, located at 1601 South Michigan Avenue, Chicago, Illinois, and O. G. Fishbain, M. S. Gottesman and E. M. Levin, individually and as officers of respondent corporation, whose address is the same as the corporate respondent, with violation of the provisions of the Federal Trade Commission Act in the sale of electrical appliances, including home freezers, and soliciting subscribers to a freezer food purchasing plan.

After the issuance of the complaint, the respondents Parliament Appliances, Inc., a corporation trading as Parliament Food Plan, and O. G. Fishbain, individually and as an officer of respondent corporation, entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the said respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

Order

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By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents further agree that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein, that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement, and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

Attached to and made a part of said agreement were separate affidavits of respondents E. M. Levin and M. S. Gottesman supported by an affidavit of respondent O. G. Fishbain, President of said corporate respondent, to the effect that although E. M. Levin and M. S. Gottesman were Secretary and Treasurer, respectively, of corporate respondent, their said offices were nominal ones, that they at no time actively engaged in the operation or management of the respondent corporation, that they set no policy as to advising or any other policy, that their only interest in the respondent corporation was that of stockholders, and that they had no other or further interest in the said respondent corporation, that they drew no salaries from the said respondent corporation and had nothing whatsoever to do with the management or operation of the said respondent corporation.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same 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 finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents, Parliament Appliances, Inc., a corporation, and its officers, and O. G. Fishbain, individually and as an officer of respondent corporation, and respondents' representa-

tives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of food freezers and in the solicitation of subscribers to their food purchase plan in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly:

(a) That respondents buy food for resale to participants in their freezer food purchasing plan;

(b) That respondents buy food in carload quantities;

(c) That respondents are wholesale food dealers;

(d) That respondents have a food plant;

(e) That respondents will place a freezer in a participant's home and supply the necessary food for such participant for 24 months at a total cost to the participant of \$12.46 per week or any other amount that is not in accordance with the facts;

(f) That participation in respondents' freezer food purchasing plan enables a participant to eliminate the retail grocer and purchase food at wholesale prices;

(g) That participation in their freezer food purchasing plan will enable a participant to effect a net saving from 25% to 50% in their food cost or any saving or percentage saving that is not in accordance with the facts;

(h) That the carrying charges on a participant's deferred payments is 6 percent or any percent other than the true amount;

(i) That participants are able to purchase all their necessary food from respondents;

(j) That the monthly payments specified in the contracts include the cost of food unless expressly limited to the food included in the initial order;

(k) That the freezer is given free at the end of a two year participation in the plan, or is ever given free;

(l) That respondents' primary business is that of selling food;

(m) That any meat supplied by respondents is U.S. Government graded, except beef.

It is further ordered, That complaint be, and the same hereby is, dismissed as to the respondents M. S. Gottesman and E. M. Levin.

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 5th day of

March, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Parliament Appliances, Inc., a corporation trading as Parliament Food Plan, and O. G. Fishbain, individually and as an officer of said corporation, 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.

Decision

IN THE MATTER OF

BOURJOIS, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (d) OF
THE CLAYTON ACT

Docket 6635. Complaint, Sept. 14, 1956—Decision, Mar. 5, 1957

Consent order requiring a New York City manufacturer of cosmetics, perfumes, and other beauty preparations to cease violating Sec. 2(d) of the Clayton Act by making payments for cooperative advertising, demonstrator services, and push money to competing customers in amounts which were not proportionally equal by any test, and by requiring some customer recipients to comply with certain terms and to furnish certain reciprocal services or payments while not requiring others to do so, or requiring them to do so in a less burdensome manner or in smaller amounts.

Mr. Donald K. King for the Commission.

Olwany, Eisner & Donnelly, of New York, N.Y., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondent, in connection with the sale and distribution in commerce of cosmetics, perfumes, soaps and other beauty aids and toilet preparations, paid promotional and advertising allowances to certain of its customers in amounts which were not made available on proportionally equal terms to all other of its customers competing in the resale of such products, in violation of § 2(d) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C., Title 15, § 13).

After the issuance of the complaint, respondent, its counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director and the Assistant Director, Bureau of Litigation of the Commission, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent Bourjois, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 35 West 34th Street, New York, New York.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission