

Decision

IN THE MATTER OF
DANIEL H. SOBO, WAKEFERN FOOD CORPORATION,
AND TWIN COUNTY GROCERS, INC.

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

Docket 6633. Complaint, Sept. 13, 1956—Decision, Mar. 19, 1957

Consent order requiring a sugar broker and two wholesale grocery buying cooperatives doing business in New York and New Jersey to cease violating the brokerage provision of the Robinson-Patman Act by such transactions as those in which respondent broker, receiving from his seller principals 5¢ per 100 pounds of sugar sold in New York City and 7¾¢ per 100 pounds sold outside the city, rebated a portion of his commissions, amounting to 4¢ per 100 pounds, to respondent buyer cooperatives.

Mr. Edward S. Ragsdale and *Mr. Kent P. Kratz* for the Commission.

Mr. Samuel M. Sprafkin, of New York City, and *Mr. Sol L. Kesselman* and *Mr. Joseph A. Weisman* of *Weisman & Freedman*, of Newark, N.J., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on September 13, 1956, charging respondents with paying or receiving rebates, commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof in connection with the purchase and sale of sugar, in violation of the provisions of §2(c) of the Clayton Act (U.S.C., Title 15, §13), as amended by the Robinson-Patman Act approved June 19, 1936.

On December 10, 1956, respondents, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

Respondent Daniel H. Sobo is identified in the agreement as an individual, with his principal office and place of business located at Room 312, 80 Wall Street, New York, New York. Respondent Wakefern Food Corporation is identified in the agreement as a New Jersey corporation with its office and principal place of business located at 715 South Avenue East, Cranford, New Jersey, and respondent Twin County Grocers, Inc., as a New Jersey corporation

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with its office and principal place of business located in the War Assets Administration Building, 1600 Highway 25, Linden, Union County, New Jersey.

Respondents admit all the jurisdictional facts alleged in the complaint and agree 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, waive any further procedure 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. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist as contained in the agreement shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondent Daniel H. Sobo, an individual, his representatives, agents and employees, in connection with the sale of sugar, in commerce as "commerce" is defined in said Clayton Act, as amended, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to respondent Wakefern Food Corporation, a corporation, or respondent Twin County Grocers, Inc., a corporation, their respective successors or assigns, officers, representatives, agents or employees, or to any other party, anything of value as a rebate, commission, brokerage fee, or other compensation or any allowance or discount in lieu thereof, upon sales of sugar made for such party's own account, or where such party

is in fact acting for or in behalf of, or is subject to the direct or indirect control of, any party to the transaction other than the person by whom such compensation is so granted or paid.

It is further ordered, That respondent Wakefern Food Corporation, a corporation, its officers, agents, representatives and employees, in connection with the purchase of sugar, in commerce as "commerce" is defined in said Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from respondent Daniel H. Sobo, or any other intermediary or seller, directly or through any corporate device or by any other means, anything of value as brokerage, or any rebate, allowance or discount in lieu thereof, upon purchases of sugar made for said respondent's own account, or where said respondent is in fact acting for or in behalf of, or is subject to the direct or indirect control of, the buyer.

It is further ordered, That respondent Twin County Grocers, Inc., a corporation, its officers, agents, representatives and employees, in connection with the purchase of sugar, in commerce as "commerce" is defined in said Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from respondent Daniel H. Sobo, or any other intermediary or seller, directly or through any corporate device or by any other means, anything of value as brokerage, or any rebate, allowance or discount in lieu thereof, in connection with the purchase of sugar made for said respondent's own account, or where said respondent is in fact acting for or in behalf of, or is subject to the direct or indirect control of, the buyer.

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 19th day of March, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Daniel H. Sobo, an individual, Wakefern Food Corporation, a corporation, and Twin County Grocers, Inc., a 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.

IN THE MATTER OF
JOHN G. WEBSTER & SONS, INC., ET AL.

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

Docket 6679. Complaint, Nov. 26, 1956—Decision, Mar. 19, 1957

Consent order requiring an appliance seller in Washington, D.C., to cease representing falsely that \$399.95 was the regular price of the Chrysler Airtemp Air Conditioner which it advertised at "Sale Price \$249.95".

Mr. Michael J. Vitale for the Commission.

Mehler and Goldsborough, of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that the respondents have violated the provisions of the Federal Trade Commission Act by the use of deceptive and misleading newspaper advertisements representing, directly and by implication, that the regular and usual retail price of their Chrysler Airtemp Air Conditioners is \$399.95, whereas in truth and in fact, the said price of \$399.95, is not the usual and regular price for said product, but said figure is grossly exaggerated and fictitious.

An agreement has been entered into by respondents, approved by their counsel, and counsel supporting the complaint which provides, among other things, that: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the Hearing Examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement; and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The Hearing Examiner having considered the agreement and proposed order and being of the opinion that the acceptance of the