IN THE MATTER OF

COLONIAL MANUFACTURING COMPANY, INC., ET AL.

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

Docket 6725. Complaint, Feb. 18, 1957—Decision, June 13, 1957

Consent order requiring a manufacturer of jellies and preserves in Oklahoma City to cease paying illegal brokerage fees on purchases of foodstuffs from a brokerage firm owned by its officers, 90% of whose business involved sales to it, with the result that it was receiving brokerage on its own purchases, in violation of Sec. 2(c) of the Clayton Act.

Mr. Cecil G. Miles for the Commission.

Mr. C. D. Ellison, of Oklahoma City, Okla., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Colonial Manufacturing Company, Inc., hereinafter sometimes referred to as "buyer respondent" is a corporation existing and doing business under and by virtue of the laws of the State of Oklahoma, with its offices and principal place of business located at 2800 So. Western Avenue, Oklahoma City, Oklahoma. Said buyer respondent has been, for the past several years, and is now, engaged in the business of manufacturing, selling and distributing jellies, preserves, apple butter, and other related products, hereinafter referred to as "food products", with gross sales approximating $2,000,000 annually.

PAR. 2. Respondent N. F. Raupe Brokerage Company is a partnership engaged in the brokerage business, principally as the buying agent for respondent Colonial Manufacturing Company, Inc., the buyer respondent named herein. Respondent N. F. Raupe Brokerage Company, hereinafter sometimes referred to as "broker respondent", maintains its principal office and place of business in the same building and in the same offices with the buyer respondent. The broker respondent is 75 percent owned by the three individual respondents named herein, who are officers and substantial owners, if not the

sole owners, of said buyer respondent. Approximately 90 percent of the brokerage business done by the broker respondent for its various principals during 1956 was on sales to buyer respondent. The total amount of such sales to said buyer respondent during 1956 was in excess of $300,000, on which sales the broker respondent collected brokerage fees from the sellers or suppliers of said food products at the rate of 2½ to 5 percent of the net sales price, depending on the particular product sold.

PAR. 3. Respondents L. J. Wilkes, Jack W. Wilkes and L. T. Wilkes are individuals engaged principally in business as manufacturers of jellies, preserves, apple butter, and other related products. They are Chairman of the Board; President; and Secretary-Treasurer, respectively, of respondent Colonial Manufacturing Company, Inc. These individual respondents own and control all or substantially all of the capital stock of the buyer respondent and are responsible for its operational policies, including its purchase and sales policies. These individual respondents are also copartners in respondent N. F. Raupe Brokerage Company, located at the same address and in the same offices as the buyer respondent. They, along with one N. F. Raupe, who is head salesman for the buyer respondent, wholly own and control the said brokerage company, and are responsible for its sales and operational policies. These partners share equally in the profits of the broker respondent, including the profits on brokerage or commissions received on sales to the buyer respondent.

PAR. 4. In the course and conduct of the businesses of respondent Colonial Manufacturing Company, Inc. and the N. F. Raupe Brokerage Company, the buyer respondent since 1948 has made substantial purchases of food products from its suppliers through the broker respondent, on which purchases it received, or its officers and owners received, something of value as a commission, brokerage, or other compensation, or allowance or discounts in lieu thereof.

PAR. 5. In the course and conduct of the businesses, as aforesaid, all the respondents named herein, directly or indirectly, cause said food products, when purchased, to be transported from said state of origin to destinations in another state. There has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, in said food products, across state lines, between these respondents, and the sellers of said food products.

PAR. 6. The acts and practices of the buyer respondent, the broker respondent, and the individual respondents, acting through

or in behalf of said buyer respondent as its officers and owners, in receiving and accepting something of value as a commission, brokerage, or other compensation, or allowance or discounts in lieu thereof, on their purchases of food products through a brokerage company owned and controlled by said individual respondents as herein alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13).

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of subsection (c) of section 2 of the Clayton Act (15 U.S.C. 13) as amended by the Robinson-Patman Act, the Federal Trade Commission on February 18, 1957, issued and subsequently served its complaint in this proceeding against respondents Colonial Manufacturing Company, Inc., a corporation existing and doing business under and by virtue of the laws of the State of Oklahoma; L. J. Wilkes, Jack W. Wilkes, and L. T. Wilkes, individually and as chairman of the board, president, and secretary-treasurer, respectively, of said corporate respondent, and also as copartners in the N. F. Raupe Brokerage Company. The office and principal place of business of respondents is located at 2800 South Western Avenue, Oklahoma City, Oklahoma.

On April 29, 1957, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, 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. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive 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. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; 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; and that the following

order to cease and desist 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, and 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.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Colonial Manufacturing Company, Inc., is a corporation existing and doing business under the laws of Oklahoma, with its office and principal place of business located at 2800 South Western Avenue, Oklahoma City, Oklahoma. Respondents L. J. Wilkes, Jack W. Wilkes, and L. T. Wilkes are chairman of the board, president, and secretary-treasurer, respectively, of said corporation, and also are copartners in the N. F. Raupe Brokerage Company, with their office and principal place of business located at the same address as the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That the respondent Colonial Manufacturing Company, Inc., a corporation, and its officers, and the individual respondents, L. J. Wilkes, Jack W. Wilkes and L. T. Wilkes, individually and as officers of Colonial Manufacturing Company, Inc., and partners in the N. F. Raupe Brokerage Company, their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the purchase of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon any purchase of food products for their own account or for the account of any of them.

It is further ordered, That the respondent N. F. Raupe Brokerage Company, a partnership, and L. J. Wilkes, Jack W. Wilkes and L. T. Wilkes, individually and as partners in the said N. F. Raupe Brokerage Company, and their respective representatives, agents and employees, directly or through any corporate or other device in

connection with the purchase of food products in commerce as "commerce" is defined in the aforesaid Clayton Act do forthwith cease and desist from receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage or other compensation or any allowance or discount in lieu thereof upon any purchase of food products by or for the account of Colonial Manufacturing Company, Inc., where either of the individual respondents L. J. Wilkes, Jack W. Wilkes or L. T. Wilkes, individually or collectively are the agents, representatives or intermediaries acting for or in behalf of or are subject to the direct or indirect control of said Colonial Manufacturing Company, Inc., or any other 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 shall, on the 13th day of June, 1957, 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.

IN THE MATTER OF

VITASAFE CORPORATION ET AL.

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

Docket 6736. Complaint, Mar. 6, 1957—Decision, June 18, 1957

Consent order requiring sellers in New York City to cease representing falsely in advertising in newspapers, magazines, etc., that a 30-day supply of their vitamin and mineral product, "VITASAFE C. F. CAPSULES," would be sent free to persons responding to the advertisements and that such persons were under no obligation to purchase additional supplies; when in fact they were required to remit 25¢ in order to secure such "free" supply, and the offer was part of a scheme under which, after the 30-day supply, respondents shipped additional monthly supplies to persons answering the advertisements, mailed them statements requesting payment therefor and, when payment was not received, placed the accounts in the hands of a collecting agency and attorney to enforce collection—continuing this practice even after receiving notification from recipients to discontinue sending the monthly supplies.

Mr. Michael J. Vitale for the Commission.

Mr. James W. Cassedy, of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges the respondents with violating the Federal Trade Commission Act through advertising in newspapers, magazines, and other national advertising media, what is alleged to be a deceptive "30 day free trial" offer as an inducement to purchasers of their vitamin capsules, designated as "Vitasafe C.F. Capsules."

An agreement has been entered into between respondents, their counsel, and counsel supporting the complaint which provides, among other things, the following: 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 requirements that the decision must contain a statement of facts 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