

Complaint

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IN THE MATTER OF

INSTITUTIONAL FOODS COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(C) OF THE CLAYTON ACT*Docket 6733. Complaint, Feb. 21, 1957—Decision, June 21, 1957*

Consent order requiring a corporate distributor of canned and packaged foods principally to schools in eastern North Carolina, with office in Raleigh, N. C., to cease violating sec. 2(c) of the Clayton Act by receiving illegal brokerage from sellers on substantial purchases of food products made through an incorporated brokerage firm in which its president and his wife owned a half interest and of which the president was also the salaried manager.

Mr. Cecil G. Miles for the Commission.

Mr. Labon Thornton, of Raleigh, N. C., *pro se* and also for Institutional Foods Co., Inc.

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 violated and are now violating the provisions of sub-section (c) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 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, Institutional Foods Company, Inc., hereinafter sometimes referred to as respondent corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 1010 Greene Street, Raleigh, North Carolina. Respondent corporation is a wholesale distributor engaged in the sale and distribution of canned and packaged foods to various institutions, principally schools, in eastern North Carolina. Its average sales approximate \$400,000 annually.

PAR. 2. Respondent Labon Thornton is president and half owner of respondent Institutional Foods, Inc., and, along with his wife owns a half interest in J. A. Richardson of Raleigh, Inc., a brokerage firm, both located in Raleigh, North Carolina. Respondent Thornton owns 31 of the 64 shares of the capital stock of the brokerage firm and his wife owns one share making up the 50 percent ownership thereof. Respondent Thornton is also manager of the brokerage concern and receives a salary for his services as said manager.

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At the end of the year respondent Thornton also shares in the profits of the brokerage business, including the brokerage received on purchases through said brokerage firm by respondent Institutional Foods Company, Inc.

As president of respondent Institutional Foods Company, Inc., and half owner thereof, respondent Thornton exercises a substantial degree of authority and control over the business conducted by respondent corporation, including the direction of its purchase, sales, and general operational policies. As vice president and general manager of J. A. Richardson of Raleigh, Inc., the brokerage firm, and along with his wife, owner of 50 percent of the capital stock thereof, respondent Thornton exercises a substantial degree of authority and control over the business conducted by that concern, including the direction of its sales and operational policies.

PAR. 3. In the course and conduct of its business as aforesaid, respondent Institutional Foods Company, Inc., makes substantial purchases of food products, from its various suppliers, through the brokerage firm of J. A. Richardson of Raleigh, Inc., both firms being substantially owned and controlled by Labon Thornton, the individual respondent named herein. On these purchases by Institutional Foods Company, Inc., as described above, its president Labon Thornton, the individual respondent named herein, has been and is now receiving something of value as a commission, brokerage, or other compensation or allowance or discount in lieu thereof from said sellers or suppliers, which has the same effect as if Institutional Foods Company, Inc., had received said brokerage direct and in turn paid it to its president in the form of dividends or by him sharing in its net profit.

PAR. 4. Said respondents, both corporate and individual, directly or indirectly, cause said food products, when purchased, to be transported from the states 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 said respondents, and the sellers of said food products.

PAR. 5. The acts and practices of the corporate respondent in purchasing through a brokerage firm, in which its president was a substantial owner and exercised substantial authority and control over both the corporate respondent and the brokerage firm and the receipt of brokerage on said purchases by the individual respondent in the manner alleged and described herein are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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INITIAL DECISION AND ORDER BY LOREN H. LAUGHLIN,
HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on February 21, 1957, issued its complaint herein under sub-section (c) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936 against the above-named respondents Institutional Foods Company, Inc., a corporation, and Labon Thornton, individually and as president of Institutional Foods Company, Inc. The complaint charges respondents with having violated the provisions of said acts in certain particulars. The respondents were duly served with process. Upon being advised that Commission's counsel and the respondents were negotiating an agreement for a consent cease and desist order pursuant to Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, the time for answer was extended and the Initial Hearing postponed by appropriate order pending the negotiation of such an agreement.

On May 6, 1957 there was submitted to the undersigned Hearing Examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between each of the said respondents and Cecil G. Miles, counsel supporting the complaint, under date of April 25, 1957, and subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by the Director and Assistant Director of the Commission's Bureau of Litigation.

On due consideration of the said agreement containing consent order to cease and desist, the Hearing Examiner finds that said agreement both in form and content is in accord with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings and that by said agreement the parties have specifically agreed that:

1. Corporate respondent, Institutional Foods Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 1010 Greene Street, in the city of Raleigh, State of North Carolina. Individual respondent Labon Thornton is president and half owner of respondent Institutional Foods Company, Inc.

2. Pursuant to the provisions of sub-section (c) of Section 2 of the Clayton Act, the Federal Trade Commission on February 21, 1957, issued its complaint in this proceeding against the respondents and a true copy was thereafter duly served on respondents.

3. 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.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) 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.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This 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.

9. The parties have further specifically agreed that the proposed order to cease and desist included in said agreement will be entered in this proceeding by the Commission without further notice to respondents; that when so entered it shall have the same force and effect as if entered after a full hearing; that it 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.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states a legal cause for complaint under sub-section (c) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that

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the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding, such order to become final only if and when it becomes the order of the Commission; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That the respondent Institutional Foods Company, Inc., a corporation, and Labon Thornton, individually and as president and half owner of Institutional Foods Company, Inc., and their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the purchase by respondents, or either of them, 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 purchases of food products by respondents for their own account.

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 21st 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.

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IN THE MATTER OF
ELLIOT KNITWEAR, INC. ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 6637. Complaint, Sept. 17, 1956—Decision, June 25, 1957

Consent order requiring two associated corporations, their common president, and the business in which he was a copartner, with common office in New York City, to cease violating the Wool Products Labeling Act by tagging wool products deceptively with respect to their constituent fibers, labeling as "Pure Cashmere", sweaters which contained a substantial quantity of fiber other than cashmere, failing to identify the manufacturer, and failing in other respects to conform to the requirements of the Act.

The charge of the complaint alleging misleading use of the word "Cashmora" on labels of certain products remains pending.

Mr. S. F. House supporting the complaint.

Goldstein, Golenbock & Barell, of New York, N. Y., for respondents.

INITIAL DECISION BY JOHN LEWIS
DISPOSING OF PORTION OF PROCEEDING

The Federal Trade Commission issued its complaint against the above-named respondents on September 17, 1956, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products. After being served with said complaint, respondents appeared by counsel and subsequently entered into an agreement containing a consent order to cease and desist, dated April 15, 1957, purporting to dispose of all of this proceeding as to all parties, except as to the use of the word "Cashmora" on tags, stamps or labels attached to certain of respondents' products as alleged in Paragraph Five of the complaint. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. Said agree-