

Complaint

54 F.T.C.

IN THE MATTER OF

POMPEIAN OLIVE OIL CORPORATION

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

Docket 6468. Complaint, Nov. 21, 1955—Decision, Sept. 20, 1957

Consent order requiring a Baltimore corporation, engaged in selling its "Pompeian Olive Oil" through food brokers and direct to large retail chain store organizations, with sales in 1954 amounting to \$1,747,493, to cease violating Sec. 2(d) of the Clayton Act by paying money to a Philadelphia food chain as an allowance for advertising, while not making such allowance available on proportionally equal terms to all competitors of the chain.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Andrew C. Goodhope and *Mr. Fredric T. Suss* for the Commission.

Mr. Morton J. Hollander, of Baltimore, Md., and *Mr. James W. Cassedy*, of Washington, D.C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has violated the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Pompeian Olive Oil Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 4201 Pulaski Highway, Baltimore, Maryland.

PAR. 2. Respondent is now and has been engaged principally in the business of selling olive oil. Respondent sells its olive oil through food brokers and direct to large retail chain store organizations. Respondent sells its olive oil under the trade name "Pompeian Olive Oil" and sales of such product made by the respondent are substantial, amounting in the year 1954 to \$1,747,493.

PAR. 3. In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the Clayton Act. Respondent ships its products, or causes them to be transported, from its principal place of business in the State of Maryland to customers located in the same and any other states of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent has paid, or contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, during the year 1955 respondent contracted to pay and did pay \$2,000.00 to the Food Fair Stores, Inc., of Philadelphia, Pennsylvania, as compensation or as an allowance for advertising or other service or facility furnished by or through such customer in connection with its offering for sale or sale of products sold it by the respondent. Such compensations or allowances were not offered or otherwise made available by respondent on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products with Food Fair Stores, Inc.

PAR. 6. The acts and practices of the respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, the Federal Trade Commission on November 21, 1955, issued and subsequently served its complaint in this proceeding against respondent Pompeian Olive Oil Corporation, a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 4201 Pulaski Highway, Baltimore, Maryland.

One hearing was held after which there was, on August 2, 1957, submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, 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. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agree-

Order

54 F.T.C.

ment 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 respondent that it has 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 respondent, 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 Pompeian Olive Oil Corporation, is a corporation existing and doing business under the laws of the State of Maryland, with its office and principal place of business located at 4201 Pulaski Highway, Baltimore, Maryland.

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

ORDER

It is ordered, That respondent Pompeian Olive Oil Corporation, a corporation, its officers, employees, agents, and representatives, directly or through any corporate or other device, in or in connection with the sale of olive oil and other products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of olive oil and other products sold to him by respondent, unless such payment is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such olive oil and other products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 20th day of September, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein 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 the order to cease and desist.

IN THE MATTER OF

MANUEL KASNOW TRADING AS KASNOW FURS

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

Docket 6767. Complaint, Apr. 8, 1957—Decision, Sept. 20, 1957

Consent order requiring a Chicago furrier to cease violating the Fur Products Labeling Act by removing the original manufacturer's label and substituting his own which failed to include all the information required by the Act, and by failing in other respects to comply with the labeling requirements; by advertising in newspapers which failed to disclose that certain fur products were used or secondhand, and represented falsely sale prices as reduced from regular prices which were in fact fictitious; and by failing to maintain adequate records as a basis for such claims of savings.

William A. Somers, Esq., for the Commission.

Thompson, Raymond, Mayer, Jenner & Bloomstein by Samuel W. Block, Esq., of Chicago, Ill., for respondent.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on April 8, 1957, charging him with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding and falsely advertising his fur products. Respondent appeared by counsel and entered into an agreement, dated July 25, 1957, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondent waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record