

Complaint

IN THE MATTER OF
REED CANDY CO.

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

Docket 6461. Complaint, Nov. 21, 1955—Decision, Jan. 28, 1958

Consent order requiring a candy manufacturer in Chicago, Ill., with annual sales approximating \$3,250,000, to cease making payments to some of its customers—such as the payment of \$100 to the Giant Food Shopping Center, Inc., of Washington, D.C., and of \$800 to Food Fair Stores, Inc., of Philadelphia, Pa.,—as compensation for advertising its products without making such payments available on proportionally equal terms to all their competitors.

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

Mr. David A. Canel, of Chicago, Ill., 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, Reed Candy Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 1245 Fletcher Street, Chicago, Ill.

PAR. 2. Respondent, Reed Candy Co., is now, and has been, engaged in the manufacture, sale and distribution of candy products sold under the trade name "Reed's". Respondent sells its products through its own salesmen and brokers who sell to candy jobbers and retail stores including retail chain store organizations. Sales by respondent of its products are substantial, amounting approximately to \$3,250,000 annually.

PAR. 3. In the course and conduct of its business respondent has engaged and is now engaging in commerce as "commerce" is defined in the Clayton Act as amended. Respondent sells and causes its products to be transported from its principal place of business located in the State of Illinois to customers located in states other than the State of Illinois and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent Reed Candy Co. 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 and facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by said respondent, and such payments were not 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 the sum of \$100 to the Giant Food Shopping Center, Inc., of Washington, D.C., and the sum of \$800 to Food Fair Stores, Inc., of Philadelphia, Pa., as compensation or as an allowance for advertising or other service or facility furnished by or through such customers in connection with their offering for sale or sale of products sold them by the respondent. Such compensation 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 Giant Food Shopping Center, Inc., or Food Fair Stores, Inc.

PAR. 6. The acts and practices of 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 Reed Candy Co., a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1245 Fletcher Street, Chicago, Ill.

On December 2, 1957, there was 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 con-

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clusions 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 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 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 Reed Candy Co., is a corporation existing and doing business under the laws of the State of Illinois, with its principal place of business located at 1245 Fletcher Street, Chicago, Ill.

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

ORDER

It is ordered, That respondent Reed Candy Co., a corporation, its officers, employees, agents, and representatives, directly or through any corporate or other device, in or in connection with the sale of candy 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 candy 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 cus-

tomers competing in the distribution or resale of such candy and other products.

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 28th day of January 1958, 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.

Decision

IN THE MATTER OF
INDIANA FUR CO., INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6585. Complaint, July 9, 1956—Decision, Jan. 28, 1958

Consent order requiring a furrier in Indianapolis, Ind., to cease violating the Fur Products Labeling Act by labeling certain fur products falsely with respect to the names of animals producing the furs; by failing, in advertisements in newspapers, to disclose the names of animals producing certain furs and that the fur in some products was artificially colored, and to set forth the names of pieces of which fur products were composed; and by failing in other respects to comply with the labeling, invoicing, and advertising requirements of the act.

Mr. S. F. House for the Commission.

Ross, McCord, Ice & Miller, by *Mr. James V. Donadio* and *Mr. Willis H. Ellis*, of Indianapolis, Ind., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on July 9, 1956, charging respondents with misbranding and falsely and deceptively invoicing and advertising their fur products, in violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

Thereafter, on November 21, 1957, respondents, their counsel, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the director and by the assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondent Indiana Fur Co., Inc. as an Indiana corporation, with its office and principal place of business located at 114 E. Washington Street, Indianapolis, Ind., and Respondents Herbert Davidson, Fred Davidson, and Roy D. Dushman as president, secretary-treasurer, and comptroller thereof, respectively, their addresses being the same as that of the corporate respondent, whose acts, policies and practices they formulate, direct and control.

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 waive any further procedure before the hearing ex-