

Decision

IN THE MATTER OF
FIDELITY STORM SASH CO. OF D.C., INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6804. Complaint, May 17, 1957¹—Decision, Mar. 27, 1958

Consent order requiring three associated companies located in Baltimore and Philadelphia to cease using bait advertising to sell storm windows; and to cease representing falsely that they manufactured the storm windows, that purchasers who allowed photographs of the windows installed by respondents to be taken and used for "model home" demonstration purposes would receive a price reduction, and that installation of the windows would result in savings of as much as 33 percent in fuel bills.

Mr. Michael J. Vitale and Mr. Thomas A. Ziebarth supporting the complaint.

Mr. Gilbert Hahn, Jr., and Mr. Bruce G. Sundlun, of the firm of *Amram, Hahn & Sundlun*, of Washington, D.C., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 17, 1957, charging them with violation of the Federal Trade Commission Act as alleged in said complaint. After service of the complaint it appeared that there was an error in the names of the corporate respondents. On motion of counsel supporting the complaint, said error was corrected by order of the hearing examiner amending the complaint to correctly state the names of the corporate respondents. Said order of the hearing examiner so amending the complaint was duly served on respondents.

Subsequently on January 15, 1958, respondents as correctly named in the order amending the complaint and their counsel entered into an agreement with counsel supporting the complaint. Said agreement contained a consent order to cease and desist from the practices complained of and purports to dispose of all issues in this proceeding. The agreement has been duly approved by the Assistant Director and the Director of the Bureau of Litigation and has been submitted to the undersigned as hearing examiner herein for his consideration in accordance with rule 3.25 of the rules of practice of the Commission.

Respondents Fidelity Storm Sash Co. of D.C., Inc., a corporation by its duly authorized officer, Fidelity Storm Sash Co., Inc., of

¹ Amended Nov. 14, 1957.

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Maryland, a corporation by its duly authorized officer, Fidelity Storm Sash Co., Inc., a corporation by its duly authorized officer and Marty Burke, Bernard Weissman and Ruth Burke individually, Marty Burke and Bernard Weissman as officers of respondent Fidelity Storm Sash Co. of D.C., Inc., Marty Burke, Bernard Weissman and Ruth Burke as officers of respondent Fidelity Storm Sash Co., Inc., of Maryland and Marty Burke and Ruth Burke as officers of respondent Fidelity Storm Sash Co., Inc., in the aforesaid agreement have admitted all of the jurisdictional facts alleged in the complaint as amended and have agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that said respondents waive all further procedural steps before the hearing examiner and 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 the said agreement. It has also been agreed that the record herein shall consist solely of the complaint as amended and said agreement, that said agreement shall not become a part of the official record, unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint as amended, that said order to cease and desist 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 of the Commission and that the complaint as amended may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order and it appearing that the agreement and order cover all the allegations of the complaint and provide for appropriate disposition of this proceeding, the order and agreement are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to sections 3.21 and 3.25 of the rules of practice and the hearing examiner accordingly makes the following findings for jurisdictional purposes and order:

1. Respondent, Fidelity Storm Sash Co. of D.C. Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia with its office and principal place of business located at 1733 Fleet Street, Baltimore, Md. Respondents Marty Burke and Bernard Weissman are individuals and

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officers of said corporation with their office and principal place of business the same as that of the corporate respondent.

2. Respondent, Fidelity Storm Sash Co., Inc., of Md., 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 1733 Fleet Street, Baltimore, Md. Respondents Marty Burke, Bernard Weissman, and Ruth Burke are individuals and officers of said corporation with their office and principal place of business the same as that of the corporate respondent.

3. Respondent, Fidelity Storm Sash Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 6234 Bustleton Avenue, Philadelphia, Pa. Respondents Marty Burke and Ruth Burke are individuals and officers of said corporation with their office and principal place of business the same as that of the corporate respondent.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint as amended states a cause of action against said respondents under the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

It is ordered, That respondent Fidelity Storm Sash Co. of D.C. Inc., a corporation, and its officers, respondents Marty Burke and Bernard Weissman, individually and as officers of said corporation; respondent Fidelity Storm Sash Co., Inc. of Md., a corporation, and its officers, respondents Marty Burke, Bernard Weissman and Ruth Burke, individually and as officers of said corporation; respondent Fidelity Storm Sash Co., Inc., a corporation, and its officers, respondents Marty Burke and Ruth Burke, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of storm windows and doors, or any other related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That said products are offered for sale when such offer is not a bona fide offer to sell the products so offered.

2. That they manufacture said products sold by them.

3. That said products are sold at any special or reduced price, unless such is the fact.

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4. That any specific percentage or any specific amount of savings in fuel bills will result from the installation of storm windows.

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 27th day of March 1958, 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.

Complaint

IN THE MATTER OF
SOUTHERN OXYGEN CO.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC.
2 (a) OF THE CLAYTON ACT*Docket 6372. Complaint, June 27, 1955—Decision, Apr. 1, 1958*

Consent order requiring a company with main office in Bladensburg, Md., operating plants and maintaining warehouses in 10 States in the middle Atlantic region and as far west as Kentucky and Tennessee for the production and processing of compressed gases, both commercial or industrial and medical, to cease discriminating in price in violation of section 2(a) of the Clayton Act through charging some customers higher prices than it charged others for its products of like grade and quality and through charging some, but not all, customers "demurrage" or cylinder rental.

Mr. Donald R. Moore for the Commission.

Frost & Towers, by *Mr. G. A. Chadwick, Jr.*, for respondent.

COMPLAINT

This is a complaint issued by the Federal Trade Commission against Southern Oxygen Co., a corporation. The complaint is issued because the Commission has reason to believe the company has violated the provisions of subsection (a) of section 2 of the Clayton Act, as amended (15 U.S.C., sec. 13). The charges are as follows:

PARAGRAPH 1. Southern Oxygen Co. is a corporation organized, existing and doing business under the laws of the State of Delaware. Its corporate offices are at 100 W. 10th Street, Wilmington, Del., but its operating headquarters and principal place of business are in Bladensburg, Md. (The company will hereafter be referred to as Southern or the company.)

PAR. 2. Southern is primarily engaged in the production, processing, distribution and sale of compressed gases, both commercial (or industrial) and medical. It also sells and distributes industrial welding and cutting equipment and supplies, and medical equipment and supplies, such as oxygen tents, anesthesia machines, "iron lungs" and resuscitators.

Commercial gases, also known as industrial gases, include oxygen, carbon dioxide, nitrogen, acetylene, hydrogen, argon and helium. These gases have a variety of commercial and industrial uses.

Medical gases include therapy and medical oxygen, compressed breathing air, mixtures of oxygen with helium or carbon dioxide; nitrous oxide, cyclopropane and ethylene.