

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.

PAR. 3. Southern operates gas producing and processing plants in the States of Maryland, New Jersey, North Carolina, and Tennessee. It maintains district offices and branch warehouses in each of these States and also in Pennsylvania, Virginia, and West Virginia. In addition, it has branch warehouses in Delaware, South Carolina, and Kentucky; an export office in New York City; and a distributing agency for medical gases in Miami, Fla.

PAR. 4. Southern is now, and for many years has been engaged in commerce, as that term is defined in the Clayton Act. It transports, or causes to be transported, its compressed gases and related products from the State of manufacture or processing to purchasers located in other States and the District of Columbia, as well as to purchasers in the State of manufacture and processing. There is and has been a constant stream of trade and commerce in these products among various States and the District of Columbia.

Southern sells its products for use, consumption and resale in the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business in commerce, Southern is now, and for many years has been, in substantial competition with other corporations, individuals, partnerships and firms engaged in the manufacture, sale and distribution of compressed gases and related products.

PAR. 6. In the course and conduct of its business in commerce, Southern has discriminated in price between different purchasers of its compressed gases of like grade and quality. This it has done by selling to some purchasers at prices higher than those charged other customers.

For example, in the sale of industrial or commercial compressed gases to some customers in Charlotte, N.C., it sold oxygen at prices ranging up to \$2.40 per hundred cubic feet, and acetylene at prices ranging up to \$5 per hundred cubic feet. To other customers in Charlotte it sold oxygen at \$1 or less per hundred cubic feet and acetylene at \$3 per hundred cubic feet.

During the same period, Southern was charging customers in Kingsport, Tenn., and in many Virginia communities prices ranging from \$1.20 to \$2.05 per hundred cubic feet of oxygen and from \$3.50 to \$4.75 per hundred cubic feet of acetylene.

In Lancaster, S.C., during the same period, Southern sold oxygen at \$1.65 per hundred cubic feet and acetylene at \$3.65 per hundred cubic feet.

Other transactions throughout Southern's sales territories show a similar pattern of discrimination.

Indirect price discriminations were also effected by Southern through the practice of charging some customers so-called "demurrage," or cylinder rental, while permitting other customers to retain cylinders without the payment of any such charges.

PAR. 7. The effect of these discriminations in price, as alleged in paragraph 6 of this complaint, has been to divert to Southern substantial business from Southern's competitors. Likewise, these discriminations are sufficient to divert substantial business from competitors to Southern in the future. Where business was not actually diverted, competitors were required to meet the discriminatory prices of Southern, with the result, actual or potential, of substantially impairing their profits and consequently lessening their ability to compete.

Thus, the effect may be substantially to lessen competition, or tend to create a monopoly, in the line of commerce in which Southern and its competitors are engaged.

Also, the pricing practices described have had, and may have, the effect of injuring, destroying or preventing competition with Southern.

PAR. 8. Southern's pricing practices, as alleged in this complaint, are in violation of subsection (a) of section 2 of the Clayton Act, as amended.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with certain price discriminations among purchasers of its compressed gases, in violation of the Clayton Act as amended by the Robinson-Patman Act. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and

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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.

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

1. Respondent Southern Oxygen Co. is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2900 Kenilworth Avenue, Bladensburg, Md.

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

ORDER

It is ordered, That respondent Southern Oxygen Co., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of compressed gases in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality:

1. By selling compressed gases to any purchaser at prices higher than the prices at which those products are sold by respondent Southern to any other purchaser where, in the sale of such products to the purchaser charged the lower price, respondent Southern is in competition with any other seller;

Provided, however, That nothing herein contained shall prohibit the classification of purchasers for pricing purposes where respondent Southern can establish that the classification and the resultant differences in price between purchasers make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such products are to such purchasers sold or delivered.

And provided further, That this order shall not be construed to prohibit respondent Southern from charging a purchaser in one trading area prices lower than the prices charged a purchaser in another trading area where respondent Southern can show that such lower price does not undercut the price at which the purchaser charged the lower price may purchase compressed gases of like grade and quality from another seller;

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2. By extending to any purchaser of compressed gases more favorable terms or rates for cylinder use than are extended to any other purchaser where, in the sale of compressed gases to the favored purchaser, respondent Southern is in competition with any other seller.

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 1st day of April 1958, become the decision of the Commission; and, accordingly:

It is ordered, That 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
I. RUBIN, INC., ET AL.

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

Docket 6781. Complaint, Apr. 18, 1957—Decision, Apr. 1, 1958

Order requiring a furrier in Beverly Hills, Calif., to cease violating the Fur Products Labeling Act by labeling which listed fictitious prices, named animals other than those producing certain furs, and failed to name the animals producing others, to state that certain furs were artificially colored, etc., or made of cheaper parts or waste fur, to name the manufacturer or country of origin, and failed in other respects to conform to the labeling requirements; by invoicing and advertising which erred in similar respects; and by failing to maintain adequate records on which claims of reduced prices were based; and

Dismissing charges of illegal removal of required labels and unsupported claims of comparative price and percentage savings.

John J. McNally, Esq., for the Commission.

Respondents, *pro se*.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On April 18, 1957, the Federal Trade Commission issued its complaint against I. Rubin, Inc., a corporation, and Sheldon R. Rubin and Irving Rubin, individually and as officers of said corporation (hereinafter collectively called respondents), charging them with misbranding and falsely and deceptively invoicing and advertising certain fur products in violation of the provisions of the Fur Products Labeling Act (hereinafter called the Fur Act), 15 U.S.C. 69(a), *et seq.*, the rules and regulations promulgated thereunder, and the Federal Trade Commission Act (hereinafter called the act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served upon respondents.

The complaint alleges in substance that respondents (1) misbranded certain of their fur products by not labeling them as required under the Fur Act and the rules and regulations promulgated thereunder; (2) caused or participated in the removal of required labels from such fur products in violation of the Fur Act; (3) falsely and deceptively invoiced certain fur products in violation of the Fur Act and said rules and regulations; (4) falsely and deceptively advertised certain fur products by failing to disclose the name of the