

Complaint

54 F.T.C.

IN THE MATTER OF

SHELL OIL CO., PREMIER CAB ASSOCIATION, INC., AND
WASHINGTON CAB ASSOCIATION, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS.
2(a) AND 2(f) OF THE CLAYTON ACT*Docket 6698. Complaint, Dec. 26, 1956—Decision, Apr. 2, 1958*

Consent order requiring an oil company with principal office in New York City to cease violating section 2(a) of the Clayton Act by granting user discounts to two cab association customers in Washington, D.C., on gasoline resold to the public generally, and requiring the two cab associations to cease violating section 2(f) of the same act by knowingly inducing and receiving the user discounts on gasoline they resold to the public in competition with retail filling stations.

Mr. Brockman Horne and Mr. Leslie S. Miller for the Commission.

Mr. William F. Kenney and Mr. George S. Wolbert, Jr., of New York, N.Y., and Mr. William Simon, of Washington, D.C., for respondent Shell Oil Co.;

Hollowell, Pitts & Martin, by Mr. R. Logan Hollowell and Mr. Vaden S. Pitts, of Washington, D.C., for respondent Premier Cab Association, Inc.;

Sedgwick & Livingstone, by Mr. Paul J. Sedgwick and Mr. Frederick H. Livingstone, of Washington, D.C., for respondent Washington Cab Association, Inc.

COMPLAINT

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (The Clayton Act—U.S.C. Title 15, sec. 13), as amended, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Shell Oil Co. has violated the provisions of subsection (a) of section 2 of said Clayton Act, as amended, and that the Premier Cab Association, Inc., a corporation, and the Washington Cab Association, Inc., a corporation, have violated the provisions of subsection (f) of section 2 of said Clayton Act, as amended, hereby issues its complaint stating its charges in this respect as follows:

Count I

PARAGRAPH 1. Respondent Shell Oil Co. is a corporation organized existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 50 W. 50th

Street, New York, N.Y. Said respondent is engaged in the business of producing, manufacturing, distributing, and selling gasoline and other petroleum products in various states of the United States and in the District of Columbia. The Shell Oil Co. sells two grades of gasoline, premium and regular. Gasoline sold and delivered by said respondent to gasoline stations in the District of Columbia is transported in tank wagons from said respondent's bulk plants in the State of Virginia and delivered from said tank wagons. In the course and conduct of its business as aforesaid, respondent is now engaged and for the past several years has been engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act and the sales involved in the discrimination in price hereinafter alleged were in interstate commerce.

PAR. 2. Respondent Premier Cab Association, Inc., is a nonprofit corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2337 Sherman Avenue NW., Washington, D.C. Said respondent provides mutual facilities for the benefit of its members and, among other things, operates a gasoline station at the above-mentioned location at which station it engages in the business of selling "Shell" gasoline at retail to its member taxicab operators and to the public.

PAR. 3. Respondent Washington Cab Association, Inc., is a nonprofit corporation organized, existing, and doing business under and by virtue of the laws of the District of Columbia with its principal office and place of business located at 26th and E Streets NW., Washington, D.C. Said respondent provides mutual facilities for the benefit of its members and, among other things, operates a gasoline station at the above-mentioned location, at which station it engages in the business of selling gasoline at retail to its member taxicab operators and to the public.

PAR. 4. On or about June 30, 1955, respondent Shell Oil Co. entered into two contracts for the sale of gasoline to the respondents Premier Cab Association, Inc., and Washington Cab Association, Inc.

The contract with the Premier Cab Association, Inc., provides for the sale of "Shell" gasoline at $\frac{3}{4}$ cents per gallon under the prevailing tank wagon price of gasoline in the District of Columbia. However, on June 30, 1955, the contract was amended to provide for the sale of gasoline at $2\frac{1}{2}$ cents per gallon under the prevailing tank wagon price of gasoline in the District of Columbia and said contract has been so understood and treated by both parties thereto.

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The contract with the Washington Cab Association, Inc. provides for the sale of "Shell" gasoline at $\frac{3}{4}$ cents per gallon under the prevailing tank wagon price, but on July 1, 1955, was amended to provide for the sale of said gasoline at $2\frac{1}{2}$ cents per gallon under the prevailing tank wagon price of gasoline in the District of Columbia and said contract has been so understood and treated by both parties thereto.

PAR. 5. Subsequent to the execution of said contracts the Shell Oil Co. has sold and delivered large quantities of "Shell" gasoline at the prices heretofore alleged, to both the Premier Cab Association, Inc., and to the Washington Cab Association, Inc. The gasoline so purchased by the Premier Cab Association, Inc., and the Washington Cab Association, Inc., has been sold by them to their member taxicab operators and to the public generally. The fact of such resale to the public generally has been well known to the respondent Shell Oil Co., although both of said contracts provide that the products purchased thereunder were not intended for resale.

PAR. 6. By selling its "Shell" gasoline in the District of Columbia to respondents Premier Cab Association, Inc., and the Washington Cab Association, Inc., at the prices stated in paragraph 4 hereof, which prices are substantially lower than the prices charged by it in the sale of gasoline of like grade and quality to other retail gasoline dealers in the District of Columbia who are in competition with respondent cab associations in the resale of said gasoline, respondent Shell Oil Co. has discriminated and is discriminating in price between respondent cab associations and said other retail gasoline dealers.

PAR. 7. The effect of such discrimination in price by the respondent Shell Oil Co., as hereinabove set forth, may be substantially to lessen competition in the sale and distribution of gasoline in the District of Columbia between the purchasers who receive and those who are denied the benefits of such discriminatory prices, and to injure, destroy or prevent competition between purchasers receiving the benefits of said discriminatory prices, and the purchasers from whom such discriminatory prices are withheld.

PAR. 8. The aforesaid discriminations in price by the respondent Shell Oil Co., as hereinabove alleged and described, constitute violations of subsection (a) of section 2 of the aforesaid Clayton Act, as amended.

Count II

PARAGRAPH 1. The allegations of this paragraph are the same as the allegations made in paragraphs 1, 2, 4, 5, 6 and 7 of count I.

PAR. 2. The respondent Premier Cab Association, Inc., at the time

of the execution of the contract referred to in paragraph 4 of count I hereof, and at all times since that date, has well known that the prices for "Shell" gasoline fixed in said contract and the amendment thereto, and thereafter paid by said respondent to the Shell Oil Co. for said gasoline, as hereinbefore set forth, were and are some 2½ cents per gallon lower than the prices at which "Shell" gasoline has been sold by the Shell Oil Co. during the same period to other retail gasoline dealers in the District of Columbia, including many such dealers competing in the sale of "Shell" gasoline with the station operated by the Premier Cab Association, Inc. Respondent Premier Cab Association, Inc. also knew that it bought gasoline in approximately the same quantities as its competitors and that the respondent Shell Oil Co. sold it gasoline from the same trucks that Shell Oil Co. used to deliver gasoline to the competitors of respondent Premier Cab Association, Inc.

PAR. 3. Said discriminations in price were knowingly induced, and at all times herein mentioned have knowingly been received, by respondent Premier Cab Association, Inc., and as such constitute violations of subsection (f) of section 2 of the aforesaid Clayton Act, as amended.

Count III

PARAGRAPH 1. The allegations of this paragraph are the same as the allegations made in paragraphs 1, 3, 4, 5, 6 and 7 of count I.

PAR. 2. The respondent Washington Cab Association, Inc., at the time of the execution of the contract referred to in paragraph 4 of count I hereof, and at all times since that date, has well known that the prices for "Shell" gasoline fixed in said contract and the amendment thereto, and thereafter paid by said respondent to the Shell Oil Co. for said gasoline, as hereinbefore set forth, were and are some 2½ cents per gallon lower than the prices at which "Shell" gasoline has been sold by the Shell Oil Co. during the same period to other retail gasoline dealers in the District of Columbia, including many such dealers competing in the sale of "Shell" gasoline with the stations operated by the Washington Cab Association, Inc. Respondent Washington Cab Association, Inc., also knew that it bought gasoline in approximately the same quantities as its competitors and that the respondent Shell Oil Co. sold it gasoline from the same trucks that Shell Oil Co. used to deliver gasoline to the competitors of respondent Washington Cab Association, Inc.

PAR. 3. Said discriminations in price were knowingly induced, and at all times herein mentioned have knowingly been received, by respondent Washington Cab Association, Inc., and as such constitute

violations of subsection (f) of section 2 of the aforesaid Clayton Act, as amended.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above named respondents on December 26, 1956, charging the Shell Oil Co., a corporation, with having violated the provisions of subsection (a) of §2 of the Clayton Act, as amended, by discriminating in the price of gasoline sold to the two respondent cab associations; and charging the Premier Cab Association, Inc., a corporation, and the Washington Cab Association, Inc., a corporation, with having violated the provisions of subsection (f) of §2 of said Clayton Act, as amended, by knowingly inducing and receiving the said discriminatory price. After the issuance of said complaint and the filing of their answers thereto, the respondents entered into separate agreements with counsel supporting the complaint, providing for the entry of a consent order disposing of all the issues in this proceeding, which agreements were duly approved by the director and the assistant director of the Bureau of Litigation.

By the terms of said agreements, the respondents admitted all the jurisdictional facts alleged in the complaint, and each of them agreed that the record herein may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents, in the agreements, expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights that they and each of them may have to challenge or contest the validity of the order to cease and desist entered in accordance with the said agreements.

By said agreements the record on which the initial decision and the decision of the Commission are to be based shall consist solely of the complaint and the said agreements. It was further agreed that the agreements shall not become a part of the official record unless and until they become a part of the decision of the Commission, and that said agreements are for settlement purposes only and do not constitute admissions by the respondents or any of them that they have violated the law as alleged in the complaint. The agreements also provided that the order to cease and desist issued in accordance with said agreements shall have the same force and effect as if entered after full hearings; 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.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreements for consent order, and it appearing that said agreements provide for an appropriate disposition of this proceeding, the aforesaid agreements are hereby accepted and are ordered filed upon becoming part of the the Commission's decision in accordance with §3.21 and §3.25 of the rules of practice, and in consonance with the terms of said agreements, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Shell Oil 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 50 W. 50th Street, New York, N.Y.

Respondent Premier Cab Association, Inc., 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 2337 Sherman Avenue NW., Washington, D.C.

Respondent Washington Cab Association, Inc., is a corporation existing and doing business under and by virtue of the laws of the the District of Columbia, with its office and principal place of business located at 26th and E Streets NW., Washington, D.C.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under the provisions of the Clayton Act, as amended.

ORDER

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

By selling to any user or organization of users any of such products, which are resold, at a lower price than respondent's price to any other purchaser who competes with such user or organization of users in the resale of such products.

The terms "resold" and "resale," as used in this order, shall not include sales to an affiliate of a buyer from respondent Shell Oil Co. solely for use by such affiliate, or sales by an organization for use in vehicles identified by its trade name, such as sales by a cooperatively-

owned taxicab company of such products for use in the taxicabs of its members.

The term "selling to any user," as used in this order, does not include sales for delivery to a business location which is primarily a reseller operation with respect to petroleum products and where only an insubstantial percentage of such deliveries are used by the purchaser.

It is further ordered, That respondent Premier Cab Association, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase in commerce, as "commerce" is defined in the Clayton Act, of petroleum products which it resells for use in vehicles other than the taxicabs of its members, do forthwith cease and desist from knowingly inducing or receiving from respondent Shell Oil Co., or from any other seller, prices for such products which are lower than the prices at which such seller sells such products of like grade and quality to any other purchaser competing with respondent Premier Cab Association, Inc., in the resale of petroleum products.

It is further ordered, That respondent Washington Cab Association, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase in commerce, as "commerce" is defined in the Clayton Act, of petroleum products which it resells for use in vehicles other than the taxicabs of its members, do forthwith cease and desist from knowingly inducing or receiving from respondent Shell Oil Co., or from any other seller, prices for such products which are lower than the prices at which such seller sells such products of like grade and quality to any other purchaser competing with respondent Washington Cab Association, Inc., in the resale of petroleum products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, on March 6, 1958, having placed this case on its own docket for review; and

Counsel in support of the complaint and counsel for respondent, Shell Oil Co., by motion filed March 25, 1958, having jointly requested the Commission to modify the hearing examiner's initial decision in certain designated respects; and

The Commission having considered the matter and being of the opinion that said request should be granted and, further, that the initial decision as modified in accordance therewith will be appropriate to dispose of this proceeding:

It is ordered That the initial decision of the hearing examiner be, and it hereby is modified by striking the last paragraph on page 3 and the first paragraph on page 4 thereof, and substituting for said paragraphs the following:

The terms "resold" and "resale," as used in this order, shall not include sales to an affiliate of a buyer from respondent Shell Oil Co. solely for use by such affiliate, or sales by an organization for use in vehicles identified by its trade name, such as sales by a cooperatively-owned taxicab company of such products for use in the taxicabs of its members.

The term "selling to any user," as used in this order, does not include sales for delivery to a business location which is primarily a reseller operation with respect to petroleum products and where only an insubstantial percentage of such deliveries are used by the purchaser.

It is further ordered, That the initial decision as so modified be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Shell Oil Co., Premier Cab Association, Inc., and Washington Cab Association, Inc., shall, within sixty (60) days after service of this order upon them, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision as modified.

IN THE MATTER OF
RANSOHOFF'S, INC.

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

Docket 6851. Complaint, July 25, 1957—Decision, Apr. 3, 1958

Consent order requiring a furrier in San Francisco to cease violating the Fur Products Labeling Act by failing to comply with the invoicing and labeling requirements; by advertising in newspapers which failed to disclose the names of animals producing the fur in certain products, represented prices as reduced from regular prices which were in fact fictitious, and used comparative prices and percentage savings claims not based on current market values; and by failing to maintain adequate records as the basis for such purported pricing claims.

Mr. John J. McNally for the Commission.

Livingston & Borregard, by *Mr. Lawrence Livingston*, of San Francisco, Calif., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with misbranding and falsely and deceptively invoicing and advertising certain of their fur products, in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, and in violation of the Federal Trade Commission Act.

After the issuance of the complaint, respondent, its counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and the assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Ransohoff's, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 259 Post Street (incorrectly spelled in the complaint as Host), San Francisco, Calif.; that during the times material to the charges of the complaint herein, respondent's fur department was leased to Teitelbaum Furs, a California corporation with its office and principal place of business located at 414 North Rodeo Drive, Beverly Hills, Calif.; that said lessee, as the operator or concessionaire of said fur department, hired its own employees, purchased, invoiced, labeled, tagged and sold all fur products, prepared all advertisements and