

IN THE MATTER OF
WASHINGTON FORGE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7053. Complaint, Jan. 27, 1958—Decision, May 3, 1958

Consent order requiring manufacturers of tableware and cutlery in Englishtown, N.J., to cease—in catalogs, promotional literature and letters, on containers, and on tags and labels affixed to their products—representing fictitious and excessive amounts as the usual retail prices, and representing falsely that certain products, actually coated with a thin finish by electrolysis, were “24 karat gold plated.”

Mr. Terral A. Jordan for the Commission

Mr. Simon J. Trosty, of New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents, Washington Forge, Inc., a corporation, and Milton Berger and Anna Berger, individually and as officers of said corporation, with having violated the provisions of the Federal Trade Commission Act in certain particulars. Respondents were duly served with process.

On March 10, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an “agreement containing consent order to cease and desist,” which had been entered into by and between the respondent corporation and Milton and Anna Berger, individually and as officers of said corporate respondent, and attorneys for both parties, under date of March 4, 1958, subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by that Bureau.

On due consideration of the said “agreement containing consent order to cease and desist,” the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission’s rules of practice for adjudicative proceedings and that by said agreement the parties have specifically agreed that:

1. Respondent Washington Forge, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey. Respondents Milton Berger and Anna Berger are

individuals and are, respectively, president-treasurer and secretary of said corporate respondent. Respondents' office and principal place of business is located in the City of Englishtown, State of New Jersey.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 27, 1958, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. 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.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondents waive:

a. Any further procedural steps before the hearing examiner and the Commission;

b. The making of findings of fact or conclusions of law; and

c. All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The parties have further specifically agreed that the proposed order to cease and desist included in said agreement may be entered in this proceeding by the Commission without further notice to respondents; that when so entered it shall have the same force and effect as if entered after a full hearing; 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.

Upon due consideration of the complaint filed herein, and the said "agreement containing consent order to cease and desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "agreement containing consent order to cease and desist" that the Commission has jurisdiction of the sub-

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ject matter of this proceeding and of the person of the respondents signatory to said agreement; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the full disposition of all the issues in this proceeding, such order to become final only if and when it becomes the order of the Commission; and that said order, therefore, should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondents, Washington Forge, Inc., a corporation, and its officers, and Milton Berger and Anna Berger, individually and as officers of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of tableware, cutlery or other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Representing, by preticketing or in any other manner, that a certain amount is the customary or usual retail price of said merchandise when said amount is in excess of the price at which said merchandise is customarily and usually sold at retail;
2. Furnishing said merchandise to others which has been preticketed with a price or amount in excess of the price or amount at which such merchandise is customarily and usually sold at retail;
3. Representing that the finish of any part of said merchandise is rolled gold plate unless said finish is of the designated carat fineness applied in the manner and to the thickness characteristic of rolled gold plate, or otherwise representing that said finish is other than what it is in fact.

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 3d day of May 1958, become the decision of the Commission; and, accordingly:

It is ordered, That Washington Forge, Inc., a corporation, Milton Berger and Anna Berger, individually and as officers of said corporation, 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

FOOD MART, INC., ET AL.

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

Docket 6910. Complaint, Oct. 7, 1957—Decision, May 6, 1958

Consent order requiring a large Southwest grocery chain operating some 60 retail stores in Texas and New Mexico, along with its two subsidiaries—a frozen foods distributor and a broker of frozen food products—to cease violating section 2(c) of the Clayton Act through receiving payments of brokerage from suppliers as an independent broker through said broker-intermediary acting in fact for said grocery chain.

Mr. Fredric T. Suss for the Commission.

Sullivan & Cromwell, by *Mr. Howard T. Milman*, of New York, N.Y.,
for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described have been, and are now, violating the provisions of subsection (c) of section 2 of the Clayton Act (U.S.C. Title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Food Mart, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 1000 Valley View Road, El Paso, Tex. It is directed and controlled by the respondents J. Spencer Weed, Gordon W. Foster, Robert H. Hoy, and Lawrence M. Davis, who are responsible for its acts and practices and who own or control more than 20 percent of its outstanding shares of stock. Respondent Food Mart, Inc. is engaged in the operation of a large chain of retail grocery stores, selling all types of grocery products to the consuming public. It purchases all of the grocery products, including all types of canned goods, frozen foods, fresh vegetables, all types of meats, canned, fresh and frozen, dairy products and numerous other food items and household articles, which it resells, from a large number of manufacturers, processors and handlers of such products. Sales made by Food Mart, Inc. are substantial, being approximately \$35 million for the 53-week period ending