

Complaint

IN THE MATTER OF
C. F. BUELOW COMPANY, ET AL.

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

Docket 7154. Complaint, May 26, 1958—Decision, Nov. 19, 1958

Consent order requiring brokers in Seattle, Wash., of sea food products, including canned salmon, to cease violating the brokerage section of the Clayton Act by making allowances or rebates in lieu of brokerage to certain buyers, a part or all of which was not charged back to the packer-principals but was taken from respondents' brokerage earnings.

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, as amended (U.S.C., Title 15, Sec 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent C. F. Buelow Company, hereinafter sometimes referred to as corporate respondent, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington with its principal office and place of business located at Room 1701 Smith Tower Building, Seattle, Wash.

Respondent Carrol F. Buelow is an individual and is president of the corporate respondent, and owns substantially all of its capital stock. As president and substantial owner, he formulates, directs and controls the acts, practices, and policies of the said corporate respondent, including its sales and distribution policies.

PAR. 2. Respondents, both corporate and individual, are now and for the past several years have been engaged in the business of selling and distributing seafood products, including canned salmon, all of which are hereinafter sometimes referred to as seafood products, and distribute as primary brokers, negotiating sales for the account of a number of their packer-principals.

PAR. 3. Respondents sell and distribute their seafood products generally through field brokers located throughout the United States. Respondents have, directly or indirectly, shipped or

Complaint

55 F.T.C.

transported, or caused said seafood products, when sold, to be shipped or transported from the canning plants or warehouses of their packer-principals to buyers located in various states of the United States other than the state or territory of origin of such seafood products. Thus respondents, both corporate and individual, are now and for the past several years have been engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 4. Respondents, both corporate and individual, are usually compensated for their services in arranging for the sale and distribution of such food products by deducting a brokerage fee or commission of 5 percent of the net selling price from the proceeds in their account of sales to their packer-principals. When field brokers are utilized in making the sale, they are usually compensated for their services by receiving from respondents, as primary brokers, a brokerage fee or commission in the amount of 2½ percent of the net selling price of the merchandise sold.

PAR. 5. In the course and conduct of their business in commerce as primary brokers for various packer-principals respondents, both corporate and individual, have made grants, allowances, or rebates in substantial amounts in lieu of brokerage, or price concessions which reflect brokerage, to certain buyers of said seafood products, a part or all of which were not charged back to their various packer-principals but, on the contrary, were taken from the brokerage earnings of respondents. In some instances these allowances, rebates, or price concessions made to buyers were shared by the primary and the field broker out of their brokerage earnings on the particular transactions.

Among and including, but not necessarily limited to the methods or means employed by respondents in so doing are the following:

(a) Selling to certain buyers at net prices which were less than the amount accounted for to their packer-principals.

(b) Granting to certain buyers deductions from prices, by way of allowances or rebates, a part or all of which were not charged back to their packer-principals.

(c) Taking reduced brokerage on sales which involved price concessions to certain buyers.

PAR. 6. The acts and practices of respondents, both corporate and individual, as hereinabove alleged and described, constitute violations of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

Mr. Cecil G. Miles and Mr. John J. McNally for the Commission.
Moriarty, Olson & Campbell by *Mr. Richard T. Olson*, of
Seattle, Wash., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on May 26, 1958, charging respondents with making grants, allowances, or rebates in lieu of brokerage, or price concessions which reflect brokerage, to certain buyers of the seafood products, including canned salmon, which respondents sell and distribute as primary brokers for a number of packer-principals; a part or all of which grants, allowances, rebates or price concessions were taken from the brokerage earnings of respondents, and in some instances shared by the primary and the field broker out of their brokerage earnings, in violation of §2(c) of the Clayton Act as amended (U.S.C. Title 15, § 13).

Thereafter, on September 3, 1958, respondents, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondent C. F. Buelow Company as a Washington corporation, with its office and principal place of business located at 1701 Smith Tower Building, Seattle, Wash., and respondent Carrol F. Buelow as an individual and president of the corporate respondent, and having the same address as the corporate respondent.

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 examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if

Decision

55 F.T.C.

entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent C. F. Buelow Company, a corporation, and its officers, and Carrol F. Buelow, individually and as an officer of said corporate respondent, and respondents' representatives, agents, or employees, directly or through any corporate or other device in connection with the sale of seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying, granting, or passing on, either directly or indirectly, to any buyer or to anyone acting for or in behalf of or subject to the direct or indirect control of such buyer, brokerage earned or received by respondents on sales made for their packer-principals by allowing to the buyers lower prices which reflect all or any part of such brokerage, or by granting them allowances or rebates which are in lieu of such brokerage, or by any other method or means.

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 19th day of November 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents C. F. Buelow Company, a corporation, and Carrol F. Buelow, individually and as an

769

Decision

officer 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.

IN THE MATTER OF
LLOYD'S FURS, INC., ET AL.

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

Docket 7185. Complaint, July 11, 1958—Decision, Nov. 19, 1958

Consent order requiring two associated furriers in Denver, Colo., to cease violating the Fur Products Labeling Act by invoicing and labeling irregularities and by advertising in newspapers and otherwise which falsely represented fur sales as "Liquidation" and "going out of business" sales.

Mr. Thomas A. Ziebarth for the Commission.

Mr. Louis G. Isaacson and *Mr. Jay E. Lutz*, of Denver, Colo., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with misbranding and with 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 of the Federal Trade Commission Act.

After the issuance of the complaint, all respondents except Anne T. Kaye, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondents Lloyd's Furs, Inc., and Chevron Furs, Inc., are corporations organized and existing under and by virtue of the laws of the State of Colorado, and that Lloyd's Furs, Inc., maintains its offices and principal place of business at 1660 Broadway, Denver, Colo.

The agreement also states that individual respondents Richard I. Kaye and Anne T. Kaye are officers of said Lloyd's Furs, Inc.; that individual respondent Richard I. Kaye is an officer of said Chevron Furs, Inc.; that the address of the individual respondents is the same as that of the corporate respondents; and that corporate respondent Chevron Furs, Inc., did business under the names Miller Furs and Miller Fur Company.

All parties agree that, inasmuch as individual respondent Richard I. Kaye is president of corporate respondent Lloyd's Furs,