

Complaint

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IN THE MATTER OF  
FRITO COMPANY, ET AL.

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

*Docket 7239. Complaint, Aug. 28, 1958—Decision, Mar. 10, 1959*

Consent order requiring a Texas distributor of Mexican-style food products and its subsidiary to cease violating Sec. 2(c) of the Clayton Act by paying the customary brokerage of 5% to a customer on direct purchases for its own account, and requiring said recipient, buying the products mainly for its own supermarkets and other outlets in Latin America and elsewhere, to cease accepting such illegal payments.

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 Frito Company, hereinafter referred to as Frito, is a corporation existing and doing business under and by virtue of the laws of the State of Texas, with its offices and principal place of business located at 2600 Cedar Springs Avenue, Dallas, Tex. Frito, since 1956, has owned approximately 51% of the voting stock of Texas Tavern Canning Company, controlling its sales and operational policies, and is charged with the acts and practices of Texas Tavern Canning Company as hereinafter described. Frito's net sales for 1957 were approximately \$33,379,500, with net profits of approximately \$1,049,295.

PAR. 2. Texas Tavern Canning Company, hereinafter referred to as Texas Tavern, is a corporation existing and doing business under and by virtue of the laws of the State of Texas, with its offices and principal place of business located at Fair Park, Sequin, Tex. Texas Tavern is now, and for the past several years has been, engaged in the business of manufacturing, selling and distributing beef and pork tamales, chicken tamales, menudo, enchiladas, fried beans, Spanish rice and other food products which it advertises as "Real Mexican Foods," and which

are referred to hereinafter as Mexican-style food products. During its fiscal year 1957, Texas Tavern had net profits on the aforementioned Mexican-style food products of approximately \$295,000 and sales of approximately \$750,000.

PAR. 3. Respondent International Basic Economy Corporation, hereinafter referred to as IBEC, is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 30 Rockefeller Plaza, New York, N.Y. IBEC, among other activities, purchases foodstuffs which it distributes and sells through wholesale and export operations. IBEC also distributes and sells such foodstuffs at retail to supermarkets located in Latin America and elsewhere. The major percentage of such sales are to supermarkets or other outlets owned or controlled by IBEC.

During 1957 IBEC had net sales of foodstuffs and related products through its Merchandising Division which were valued at \$6,072,510, with net profits on such sales of approximately \$126,000. IBEC's consolidated sales for 1957 amounted to \$70,635,455.

PAR. 4. Respondent Texas Tavern sells and distributes its Mexican-style food products, hereinbefore mentioned, to customers located in the several States of the United States in commerce, as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act. Texas Tavern sells and distributes the major portion of its Mexican-style food products to its customers through brokers located in the various States of the United States. Sales of Mexican-style food products are made direct to IBEC by Texas Tavern.

Respondent IBEC, among other activities, purchases foodstuffs from various sources including respondent Texas Tavern. These foodstuffs are subsequently sold to purchasers in the United States, Puerto Rico and Latin American countries. IBEC also sells such foodstuffs to supermarkets including IBEC controlled supermarkets in Latin America and Puerto Rico and to PESCA, an IBEC controlled wholesale and retail food outlet in Venezuela.

PAR. 5. Respondents Texas Tavern when selling its Mexican-style food products through brokers, pays such brokers a commission or brokerage fee for their services amounting to 5% of the gross dollar volume of orders through such brokers.

During and since 1956 Texas Tavern has granted a commission or brokerage fee, or other compensation or allowance, or

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discount in lieu thereof, of 5% of the gross dollar volume of sales made to respondent IBEC, which purchases Texas Tavern's Mexican-style food products for its own account.

PAR. 6. The acts and practices of respondent Frito or respondent Texas Tavern in promoting the sale of Mexican-style food products by rebating to respondent IBEC commissions, brokerage, or other compensation or allowances or discounts in lieu thereof, as set forth above, and the acts and practices of respondent IBEC of receiving and accepting from respondent Frito or respondent Texas Tavern rebates, commissions, brokerage, or other compensation or allowances, or discounts in lieu thereof as set forth above, in connection with the purchase of Mexican-style food products as aforesaid, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

*Mr. Daniel A. Austin, Jr.* for the Commission.

*Mr. Jack Johannes*, of Dallas, Tex., for Frito Company and Texas Tavern Canning Company.

*Curtis, Mallet-Prevost, Colt & Mosle*, by *Mr. John French*, of New York, N.Y., for International Basic Economy Corporation.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on August 28, 1958, charging respondent Frito Company (hereinafter referred to as respondent Frito) with the acts and practices of its subsidiary, respondent Texas Tavern Canning Company (hereinafter referred to as respondent Texas Tavern) in the manufacture, sale and distribution of beef and pork tamales, chicken tamales, menudo, enchiladas, fried beans and Spanish rice, which it advertises as "Real Mexican Foods" (hereinafter referred to as "Mexican-style food products"); respondent Frito's net sales for 1957 having been approximately \$33,379,500, with net profits of approximately \$1,049,295, and respondent Texas Tavern's sales for that year having been approximately \$750,000, with net profits on the aforementioned Mexican-style food products of approximately \$38,768.10. The complaint alleges that respondent International Basic Economy Corporation (hereinafter referred to as respondent IBEC) purchases direct from respondent Texas Tavern said Mexican-style food products, which it sells to purchasers in the United States, Puerto Rico and Latin America, including IBEC-controlled supermarkets in Latin America and Puerto Rico, and to PESCA, an IBEC-controlled wholesale and retail food outlet

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in Venezuela; IBEC's net sales of foodstuffs and related products in 1957 being valued at \$6,072,510, with net profits thereon of approximately \$126,000, and its consolidated sales for that year amounting to \$70,635,455. The complaint further alleges that respondent Texas Tavern has, during and since 1956, granted to respondent IBEC a commission or brokerage fee, or other compensation or discount in lieu thereof, of 5% of the gross dollar volume of sales made to respondent IBEC, which purchases respondent Texas Tavern's Mexican-style food products for its own account. The complaint charges respondents Frito and Texas Tavern with paying, and respondent IBEC with receiving, such discount in lieu of a commission, brokerage fee, or other compensation or allowance, in violation of §2(c) of the Clayton Act (U.S.C., Title 15, §13) as amended by the Robinson-Patman Act, approved June 19, 1936.

On November 10, 1958, respondent IBEC, 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 an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration. On December 31, 1958, respondents Frito and Texas Tavern, with their counsel, each entered into a similar agreement with counsel supporting the complaint. Both of these agreements were approved by the acting director of the Commission's Bureau of Litigation, and thereafter were likewise submitted to the hearing examiner for consideration.

The first agreement identifies respondent International Basic Economy Corporation as a New York corporation, with its office and principal place of business located at 30 Rockefeller Plaza, New York, N.Y. The second agreement identifies respondent Frito Company as a Texas corporation, with its office and principal place of business located at Exchange Bank Building, Dallas, Tex. The third agreement identifies respondent Texas Tavern Canning Company as a Texas corporation, with its office and principal place of business located at Fair Park, Seguin, Tex.

In all three agreements, 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

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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 each agreement as to the parties signatory thereto; that the order to cease and desist, as contained in each agreement, when it shall have become a part of the decision of the Commission, 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; 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 respondent signatory thereto that it has violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, the provisions of the three agreements, each as to the parties signatory thereto, and the proposed orders, the hearing examiner is of the opinion that such orders constitute a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreements, the hearing examiner accepts the three Agreements 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 Frito Company, a corporation, and respondent Texas Tavern Canning Company, a corporation, its officers, agents, representatives and employees, in connection with the sale of food products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying or granting, directly or through any corporate or other device, to respondent International Basic Economy Corporation, a corporation, its respective successors or assigns, officers, representatives, agents or employees, or to any other buyer, anything of value as a rebate, commission, brokerage fee, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of food products to such buyer for its own account.

*It is further ordered,* That respondent International Basic Economy Corporation, a corporation, its officers, agents, representatives and employees, in connection with the purchase of food

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products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from respondent Texas Tavern Canning Company, a corporation, or from respondent Frito Company, a corporation, or from any other intermediary or seller, directly or through any corporate device or by any other means, anything of value as brokerage, or any rebate, allowance or discount in lieu thereof, in connection with the purchase of food products made for respondent International Basic Economy Corporation's own account.

DECISION OF THE COMMISSION AND ORDER TO FILE  
REPORT OF COMPLIANCE

The hearing examiner, on January 27, 1959, having filed his initial decision wherein he accepted agreements containing consent orders, theretofore executed by the respondents and counsel in support of the complaint, and entered an order to cease and desist in conformity with said agreements, service of which was completed on February 5, 1959; and

Counsel for the respondents and counsel in support of the complaint, on February 25, 1959, having filed a joint motion requesting the correction of certain errors in the initial decision; and

The Commission having determined that the corrections referred to should be made and that thereafter the initial decision will be adequate and appropriate to dispose of this proceeding:

*It is ordered*, That the first paragraph of the initial decision be, and it hereby is, modified in the following respects: (1) by striking the phrase "wholly owned" from the third line; (2) by inserting the word "net" before the word "profits" in the twelfth line; and (3) by striking "\$295,000" from the thirteenth line and inserting in lieu thereof "\$38,768.10."

*It is further ordered*, That the initial decision, as so modified, shall, on the 10th day of March 1959, become the decision of the Commission.

*It is further ordered*, That the respondents, Frito Company, Texas Tavern Canning Company, and International Basic Economy Corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission reports, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision.

IN THE MATTER OF  
COLEMAN'S FASHION SHOP, INC., ET AL.

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

*Docket 7299. Complaint, Nov. 14, 1958—Decision, Mar. 10, 1959*

Consent order requiring a furrier in Wellesley, Mass., to cease violating the Fur Products Labeling Act by failing to set forth as required on labels and invoices such terms as "Persian Lamb," "Dyed Mouton-processed Lamb," and "Dyed Broadtail-processed Lamb"; by advertising in newspapers which represented fur products as from a liquidating business and prices as reduced from regular prices which were in fact fictitious; and by failing in other respects to comply with the labeling, invoicing, and advertising requirements, and to keep adequate records as a basis for said pricing claims.

*Mr. Alvin D. Edelson* supporting the complaint.

*Mr. Alan J. Dimond*, of Boston, Mass., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 14, 1958, charging them with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondents appeared by counsel and entered into an agreement, dated January 7, 1959, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allega-