

Complaint

56 F.T.C.

IN THE MATTER OF

MARLUN MANUFACTURING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 2(d) OF THE CLAYTON ACT

Docket 7516. Complaint, June 10, 1959—Decision, Apr. 14, 1960

Consent order requiring the manufacturer of its "Black Angus" electric broiler rotisseries in Woodside, Long Island, N.Y., to cease discriminating in price by making promotional payments to certain wholesalers but not to all their competitors on proportionally equal terms; and to cease representing falsely in brochures, price lists and catalogue sheets distributed to dealer-customers and in newspaper and magazine advertising, that the excessive prices set forth were their customary retail prices.

COMPLAINT

The Federal Trade Commission, having reason to believe that Marlun Manufacturing Company, Inc., a corporation, Emanuel Sado and Maurice Sado, individually and as officers of said corporation, hereinafter referred to as respondents, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act and the provisions of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in those respects as follows:

COUNT I

PARAGRAPH 1. Respondent Marlun Manufacturing Company, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York. Respondents Emanuel Sado and Maurice Sado are president and secretary-treasurer, respectively, of the corporate respondent. They formulate, direct, and control the policies, acts, and practices of the corporate respondent and are responsible for the acts and practices herein alleged to be unlawful. The business address of all respondents is 60-06 37th Avenue, Woodside 77, Long Island, New York.

PAR. 2. For a number of years respondent corporation has been, and now is, manufacturing and selling a line of electric broiler-rotisseries under the brand name of "Black Angus." It sells directly to some retailers and also to many independent wholesalers which resell such products to retailers.

PAR. 3. Respondent corporation is now, and for many years past has been engaged in commerce as defined in the Federal Trade Com-

mission Act and in the Clayton Act in that it ships its rotisseries from the state of manufacture to purchasers located in other states of the United States and, in so doing, is also in competition with other manufacturers and sellers of similar products.

PAR. 4. In the course and conduct of its business in commerce respondents have paid, or have contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of the rotisseries sold to them by respondent Marlun Manufacturing Company, Inc., and such payments were not made available on proportionally equal terms to all other customers competing in the distribution of the rotisseries.

PAR. 5. For example, during the year 1957 respondents contracted to pay and did pay the sum of \$807.00 to Everybody's Supply Company of Philadelphia, Pennsylvania, as compensation or as an allowance for advertising or other service or facility furnished by or through such customers in connection with its offering for sale or sale of rotisseries sold to it by Marlun Manufacturing Company, Inc.

Furthermore, during the year 1956 respondents contracted to pay and did pay the sum of \$436.94 to Dobkin Electrical Supply Co. of Chicago, Illinois, as compensation or as an allowance for the wages of a clerk employed by Dobkin to demonstrate and to sell respondents' rotisseries both on Dobkin's premises and at the locations of some of Dobkin's dealer-customers in connection with the offering for sale or sale of the rotisseries sold to Dobkin Electrical Supply Co. by Marlun Manufacturing Company, Inc.

Such compensation or allowances were not offered or otherwise made available by respondents on proportionally equal terms to all other customers competing in the sale and distribution of respondents' rotisseries with Dobkin Electrical Supply Co. and Everybody's Supply Co. and with the dealer-customers of those two companies.

PAR. 6. The acts and practices of respondents, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13).

COUNT II

PARAGRAPH 1. The allegations of this paragraph are the same as the allegations made in paragraphs 1, 2, and 3 of Count I.

PAR. 2. Through the use of statements and representations appearing in brochures, price lists, and catalogue sheets distributed to

customers and in advertisements published in newspapers and magazines, respondents have represented directly or by implication that the prices set out in certain of such advertisements, brochures, price lists and catalogue sheets are the prices at which the rotisseries are regularly and customarily sold at retail.

PAR. 3. The statements and representations referred to above are false, misleading, and deceptive. In truth and in fact the prices set out in such brochures, price lists, catalogue sheets, and advertisements are not the regular or customary retail prices of the rotisseries but are in excess thereof because the rotisseries seldom, if ever, sold at the designated prices at retail but are usually sold at substantially less amounts.

PAR. 4. By furnishing the wholesalers and retailers of their products with price lists, brochures, catalogue sheets, and advertising and promotional material containing the statements and representations referred to in paragraph 2 above, respondents placed in the hands of such retailers and wholesalers the means and instrumentalities through and by which they are enabled to mislead and deceive the purchasing public as to the regular or customary retail prices of the rotisseries.

PAR. 5. The use by respondents of these false, misleading, and deceptive statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and into the purchase of a substantial number of rotisseries because of such erroneous and mistaken belief. As a result thereof trade has been unfairly diverted to respondents from their competitors and injury has been done to competition in commerce.

PAR. 6. The aforesaid acts and practices of respondents are to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act (15 U.S.C.A. 45).

Mr. John B. Clayton for the Commission.

Mr. Vincent J. Fuller and *Mr. Edward Bennett Williams*, of Washington, D.C., for Marlun Manufacturing Company, Inc. and Emanuel Sado.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated June 10, 1959, the respondents are charged with violating the provisions of section 5 of the Federal Trade Com-

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Order

mission Act and subsections (d) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

On January 27, 1960, respondents Marlun Manufacturing Company, Inc., a corporation, and Emanuel Sado, individually and as an officer of said corporation, and their attorneys, entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it 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.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

The complaint insofar as concerns respondent Maurice Sado should be dismissed for the reason that service of the complaint was not perfected and for other good reasons shown.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Marlun Manufacturing Company is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 60-06 37th Avenue, in the City of Woodside 77, Long Island, State of New York. Respondent Emanuel Sado is an officer of said corporation.

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

ORDER

It is ordered, That respondents, Marlun Manufacturing Company, Inc., a corporation, and its officers, and Emanuel Sado, individu-

ally and as an officer of said corporation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale or the sale of rotisseries in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Clayton Act, as amended, do forthwith cease and desist from:

1. Paying, or contracting for the payment of, anything of value to or for the benefit of any customer or respondents as compensation or in consideration for advertising, display, wages of clerks, or any other services or facilities furnished by or through such customer in connection with the handling, processing, sale, offering for sale, or distribution of respondents' products, unless such payment or consideration is affirmatively offered on proportionally equal terms to all other customers competing in the resale of such products with the favored customer.

2. Representing, directly or by implication, that any price is the retail price of their rotisseries which is in excess of the price at which the rotisseries are regularly and customarily sold at retail in the trade area or areas where the representations are made, or that the prices at which such rotisseries are being offered for sale constitute reductions from the prices at which they are regularly or customarily sold in the trade area or areas where the representations are made, or that the amount of such reductions constitutes savings to purchasers.

3. Providing distributors and retailers of their rotisseries with materials by or through which they may mislead and deceive the purchasing public as to the regular and customary retail prices of their products.

It is further ordered, That the complaint in its entirety be and hereby is dismissed as to Maurice Sado, individually and as an officer of the respondent corporation.

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 14th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Marlun Manufacturing Company, Inc., a corporation, and Emanuel Sado, individually and as an 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.

Decision

IN THE MATTER OF
STERN BROTHERS

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

Docket 7550. Complaint, July 23, 1959—Decision, Apr. 14, 1960

Consent order requiring a New York City department store to cease violating the Fur Products Labeling Act by labeling certain fur products falsely as to the animal producing the furs; by setting forth the name "United States" on invoices of furs of foreign origin; by advertising in newspapers which falsely represented fur products to be "priced below wholesale" and "nationally advertised from" certain prices which were not the usual prices in the trade area concerned, and made claims as to prices and values without maintaining adequate records as a basis therefor; and by failing in other respects to comply with requirements of the Act; and to cease such unfair trade practices as in advertising designating as "reg.," "regularly," and "usually," amounts in excess of its current selling prices.

Mr. Charles W. O'Connell for the Commission.

Sullivan & Cromwell, of New York, N.Y., for respondent.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER¹

On July 23, 1959 the Federal Trade Commission issued its complaint in this proceeding against Stern Brothers, a corporation, charging it with violations of the Federal Trade Commission Act and the Fur Products Labeling Act in connection with the sale and distribution of fur products and other merchandise. On the same date, July 23, 1959, Stern Brothers was merged with Allied Stores Corporation, and the business previously carried on by said Stern Brothers has been carried on by Allied Stores Corporation as Stern Brothers Division of Allied Stores Corporation.

On February 1, 1960 Allied Stores Corporation, trading as Stern Brothers, by its duly authorized officer and by its attorney entered into an agreement for a consent order with counsel supporting the complaint in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Federal Trade Commission. Incorporated in, and made a part of, this agreement was a request by all of the parties that the complaint be amended by substituting Allied Stores Corporation, trading as Stern Brothers, a corporation, in the

¹ The initial decision amended the complaint by substituting Allied Stores Corporation, trading as Stern Brothers, a corporation, in the place and stead of the respondent named in the complaint.