

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of June 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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
PLUMROSE, INC.

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

Docket 7753. Complaint, Jan. 25, 1960—Order, June 19, 1961

Order dismissing for lack of jurisdiction—because, as the wholly owned subsidiary of a Copenhagen, Denmark, packer, respondent wholesaler was a packer as defined in the Packers and Stockyards Act of 1921—complaint charging a New York City importer of Danish canned meats with granting discriminatory promotional allowances to customers in violation of Section 2(d) of the Clayton Act.

Mr. Fredric T. Suss, Mr. Timothy J. Cronin, Jr., Mr. Philip F. Zeidman and Mr. Lynn C. Paulson for the Commission.

Moynihan & Wachsmith, by *Mr. Arthur Moynihan and Mr. Nicholas S. Vazzana*, of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on January 25, 1960, charging the Respondent with violating §2(d) of the Clayton Act as amended by the Robinson-Patman Act, by paying to favored customers promotional or advertising allowances which were not made available to all other customers on proportionally equal terms.

After counsel supporting the complaint had presented evidence at several hearings and had rested their case, counsel for the Respondent, at the hearing held on Respondent's behalf in Washing-

ton, D.C. on February 8, 1961, moved for the dismissal of the complaint herein on the ground that the Respondent is a packer, over whose alleged activities the Commission does not have jurisdiction. The motion was taken under consideration, and briefs were submitted by opposing counsel.

The evidence shows that the Respondent is a New York corporation and a wholly-owned subsidiary of P. & S. Plum, Ltd., of Copenhagen, Denmark. The evidence shows further that the parent corporation operates, in Denmark, a packing plant engaged in the canning of meat, and, through an affiliate, also operates a slaughterhouse.

The Packers and Stockyards Act, 1921, as amended, insofar as it is applicable to P. & S. Plum, Ltd., Respondent's parent corporation, defines a packer as:

* * any person engaged in the business * * * (b) of manufacturing or preparing meat or meat food products for sale or shipment in commerce * * *.

In the light of this definition, the parent corporation of the Respondent is clearly a packer.

The Respondent herein, the wholly-owned subsidiary of the Danish corporation, is, however, not engaged in the packing of meats, but is engaged in the sale and distribution at wholesale of the meats canned by its principal in Denmark and shipped to the Respondent in New York for such sale and distribution. Because of these facts and the Respondent's motion, two questions arise:

1. Is the Respondent corporation a packer within the meaning of the Packers and Stockyards Act, 1921, as amended?
2. If the Respondent corporation is a packer, does the Federal Trade Commission have jurisdiction over its acts and practices as alleged in the complaint?

The Packers and Stockyards Act, U.S.C. Title 7, § 201, sets forth definitions of various persons who are classified as packers for the purposes of that Act. The portion of § 201 applicable here is as follows:

When used in this Act—The term "packer" means any person engaged in the business * * * (d) of marketing meats, meat food products, * * in commerce; * * [if] * * (3) Any interest in such * * marketing business is owned or controlled, * * by any person engaged in any business referred to in clause * * (b) above; * *.

As we have seen hereinabove, clause (b) of the Act quoted is clearly applicable to the Respondent's parent corporation.

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Since the Respondent is the wholly-owned subsidiary of a packer, according to the above definition the Respondent must itself be classified as a packer.

In 1958 the Packers and Stockyards Act and the Federal Trade Commission Act were amended to extend the jurisdiction of the Federal Trade Commission:

(3) Over all transactions in commerce in margarine or oleomargarine and over *retail* sales of meat, meat food products, livestock products in unmanufactured form, and poultry products (emphasis supplied).

The Commission interpreted the above amendments, in the Matter of Renaire Corporation (Pennsylvania), et al., Docket No. 6555, as conferring:

* * * on the Commission jurisdiction over unfair practices in commerce, in connection with all transactions by packers involving (1) commodities other than livestock, meats, meat food products, livestock products in unmanufactured form, poultry or poultry products and (2) with exceptions not here material, *retail sales* by packers of all products (emphasis supplied).

Within the meaning of this interpretation, the applicable amendment of the Federal Trade Commission Act clearly limits the Commission's jurisdiction over packers to "retail sales".

The evidence shows that the Respondent herein is not engaged in selling at retail, but is engaged exclusively in the business of selling and distributing meats at wholesale.

We must therefore conclude that the Federal Trade Commission does not have jurisdiction over the acts and practices of this Respondent as alleged in the complaint. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

FINAL ORDER

The date on which the hearing examiner's initial decision would have become the decision of the Commission having been extended by order issued May 9, 1961, until further order of the Commission; and

The Commission having now determined that said initial decision is appropriate:

It is ordered, That the initial decision of the hearing examiner providing for dismissal of this proceeding for lack of jurisdiction be, and it hereby is, adopted as the decision of the Commission.

IN THE MATTER OF

REVILLON WHOLESALE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS
LABELING ACTS*Docket 8265. Complaint, Dec. 30, 1960—Decision, June 27, 1961*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by setting forth on invoices and in advertising fictitious prices for fur products; by failing to keep adequate records on which pricing and value claims were based; by failing in other respects to comply with invoicing and advertising requirements; and by furnishing false guaranties that certain of their fur products were not misbranded, falsely invoiced, and falsely advertised.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Revillon Wholesale, Inc., a corporation, and Emil Wendling, Abraham Grauer, Herman Grauer, Jacques Haran, Marty Weinstein and Peter Wenzel, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Revillon Wholesale, Inc. is a corporation organized, 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 352-354 Seventh Avenue, New York, New York.

Emil Wendling, Abraham Grauer, Herman Grauer, Jacques Haran, Marty Weinstein, and Peter Wenzel are officers of the said corporate respondent. These individuals control, formulate and direct the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the sale, advertising and offering for sale, in commerce, and in the transportation

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and distribution in commerce of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b) (1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced in that the respondents set out on invoices certain prices of fur products which were in fact fictitious in violation of Section 5(b) (2) of the Fur Products Labeling Act.

PAR. 5. Certain of said fur products were falsely and deceptively advertised in that the respondents made representations and gave notices concerning said fur products, which representations and notices were not in accordance with the provisions of Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder; and which representations and notices were intended to aid, promote and assist, directly or indirectly, in the sale, and offering for sale of said fur products.

By means of said representations and notices and by means of other representations and notices of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that respondents thereby made representations as to the prices of fur products which prices were in fact fictitious in violation of Section 5(a) (5) of the Fur Products Labeling Act.

PAR. 6. In advertising fur products for sale as aforesaid respondents made claims and representations respecting the prices and values of fur products. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 7. Respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced and falsely advertised when respondents in furnishing such guaranties had reason to believe the fur products so falsely guaranteed would be introduced, sold, transported or distributed in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the

Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

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

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on December 30, 1960, issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act, and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, in certain particulars, and respondents were duly served with process.

On April 21, 1961, 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 respondents and counsel supporting the complaint, under date of April 17, 1961, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Revillon Wholesale, Inc., 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 352-354 Seventh Avenue, New York, New York. Respondents Abraham Grauer, Herman Grauer, Jacques Haran, Marty Weinstein and Peter Wensel, erroneously named in the complaint as Peter Wenzel, are officers of the corporate respondent. They control, formulate and direct the acts, practices and policies of the corporate respondent. Their address is the same as that of the corporate respondent.

2. 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.

3. This agreement disposes of all of this proceeding as to all parties. It is recommended that the complaint be dismissed as to

respondent Emil Wendling, individually and as an officer of said corporation, for the reason that he is no longer an officer of said corporation and has retired from business, as is more fully set forth in the affidavit which is attached hereto and made part hereof.

4. 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.

5. 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.

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

7. 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. 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 hearing examiner approves and accepts this agreement, and finds that the Commission has jurisdiction of the subject-matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, and under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, against all respondents except Emil Wendling, both generally and in each of the particulars alleged therein; that as to respondent Emil Wendling, the complaint herein should be dismissed, as provided for in the agreement; that this proceeding is in the interest of the public; that the order proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondents Revillon Wholesale, Inc., a corporation, and its officers, and Abraham Grauer, Herman Grauer,

Jacques Haran, Marty Weinstein, and Peter Wensel, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale, transportation or distribution in commerce of fur products; or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

1. Failing to furnish to purchasers of fur products invoices showing all of the information required to be disclosed by each of the subsections of §5(b)(1) of the Fur Products Labeling Act;

2. Representing, directly or by implication, on invoices that the former or regular price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such products in the recent regular course of business;

B. Furnishing a false guaranty that any fur or fur product is not misbranded, falsely invoiced, or falsely advertised, when the respondents have reason to believe that such fur or fur product may be introduced, sold, transported or distributed in commerce;

C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

1. Represents, directly or by implication, that respondents' usual and customary price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of business;

2. Misrepresents in any manner the savings available to purchasers of respondents' fur products;

D. Making claims and representations respecting prices and values of fur products unless respondents maintain full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Emil Wendling, individually and as an officer of said 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 27th day of June, 1961, become the decision of the Commission; and, accordingly:

It is ordered. That respondents Revillon Wholesale, Inc., a cor-