

IN THE MATTER OF
DOMINION BRIQUETTES & CHEMICALS, LTD., ET AL.

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

Docket 7937. Complaint, June 10, 1960—Decision, Aug. 4, 1961

Consent order requiring distributors in Palo Alto, Calif., to cease selling as "charcoal", briquets received from a company in Canada which manufactured them from lignite.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Dominion Briquettes & Chemicals, Ltd., a corporation, and Crawford Associates, Inc., a corporation, and Chester C. Crawford, Edmond A. Mathis and Ethel R. Crawford, individually and as officers of the latter corporation, hereinafter referred to as respondents, have violated the provisions of said 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. Respondent Dominion Briquettes & Chemicals, Ltd., is a Canadian corporation, organized, existing and doing business under and by virtue of the laws of Canada and the Province of Manitoba, in particular. Its office and principal place of business is located at 510 Electric Railway Chambers, Winnipeg, Manitoba. Its United States office is located at 4123 Dake Avenue, Palo Alto, California.

Respondent Crawford Associates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and place of business located at 4123 Dake Avenue, Palo Alto, California. This corporate re-

spondent is the sales agent in the United States for corporate respondent Dominion Briquettes & Chemicals, Ltd.

Respondents Chester C. Crawford, Edmond A. Mathis and Ethel R. Crawford are officers of the latter corporate respondent and as such they formulate, direct and control the acts and practices thereof, including the acts and practices hereinafter set forth. Their address is the same as Crawford Associates, Inc.

PAR. 2. Respondents are now and for some time last past have been engaged in the offering for sale, sale and distribution of briquets manufactured from lignite by respondent Dominion Briquettes & Chemicals, Ltd. Sales to distributors and retailers in the United States are made by respondents, Crawford Associates, Inc., and the individuals named above, who arrange for the direct shipment of the briquets by Dominion Briquettes & Chemicals, Ltd., from its factory in Canada to the respective purchasers in various states of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their businesses, respondents are in competition, in commerce, with corporations, firms and individuals in the sale of briquets.

PAR. 4. In the course and conduct of their businesses, and for the purpose of inducing the sale of their briquets, the respondents have described such product as "charcoal" briquets.

PAR. 5. The public generally understands and believes that an article described as "charcoal" is made from wood. Respondents, through the use of the word "charcoal" as descriptive of, or in connection with, their product lead the public into the erroneous and mistaken belief that their product is made from wood, and into the purchase of substantial quantities of their said product by reason of said erroneous and mistaken belief.

As a consequence thereof substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and injury has thereby been, and is being, done to competition in commerce.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now 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.

Mr. John J. McNally and *Mr. Ames W. Williams* for the Commission.

Steinhart, Goldberg, Feigenbaum & Ladar, by *Mr. Joseph J. Carter*, San Francisco, Calif., for the respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on June 10, 1960, issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars, and respondents were duly served with process.

On May 18, 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 for both parties, under date of May 5, 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 Dominion Briquettes & Chemicals, Ltd., is a Canadian corporation, organized, existing and doing business under and by virtue of the laws of Canada and the Province of Manitoba, in particular. Its office and principal place of business is located at 510 Electric Railway Chambers, in the City of Winnipeg, Province of Manitoba, Canada.

Respondent Crawford Associates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and place of business located since February 1, 1961, at 903 North San Antonio Road, in the City of Los Altos, State of California.

Respondents Chester C. Crawford, Edmond A. Mathis and Ethel R. Crawford are individuals and are officers of respondent Crawford Associates, Inc., and formulate, direct and control the acts and practices thereof. Their business address is the same as that of Crawford Associates, Inc.

2. True copies of the complaint were sent by means of registered mail to respondent Dominion Briquettes & Chemicals, Ltd., at the offices of Crawford Associates, Inc., and at the principal office of

Dominion Briquettes & Chemicals, Ltd. at 510 Electric Railway Chambers, Winnipeg, Manitoba, Canada. Receipt thereof was duly acknowledged, but respondent Dominion Briquettes & Chemicals, Ltd. has filed special appearance in this proceeding.

3. Respondents Crawford Associates, Inc., and Chester C. Crawford, Edmond A. Mathis and Ethel R. Crawford, individually and as officers of said corporation, 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.

Respondent Dominion Briquettes & Chemicals, Ltd. does not admit the jurisdictional facts alleged in the complaint. Counsel supporting complaints states he cannot prove that the relationship between respondents Crawford Associates, Inc., Chester C. Crawford, Edmond A. Mathis, and Ethel R. Crawford as individuals and as officers of said corporation, and the respondent Dominion Briquettes & Chemicals, Ltd., is other than that of buyers and seller, respectively; and states further his knowledge and belief that since Dominion Briquettes & Chemicals, Ltd. has no agent in, and is not otherwise engaged in doing business in the United States, the said corporate respondent is not subject to the jurisdiction of the Federal Trade Commission.

4. This agreement disposes of all of this proceeding as to all parties and provides for dismissal of complaint against the corporate respondent Dominion Briquettes & Chemicals, Ltd.

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.

9. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to re-

spondents. 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; finds that the Commission has jurisdiction of the subject-matter of this proceeding and of all respondents herein except Dominion Briquettes & Chemicals, Ltd.; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, against all respondents except Dominion Briquettes & Chemicals, Ltd., both generally and in each of the particulars alleged therein; 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 Crawford Associates, Inc., a corporation, and its officers, and Chester C. Crawford, Edmond A. Mathis and Ethel R. Crawford, individually and as officers of said corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of briquets manufactured from lignite, do forthwith cease and desist from describing or representing, directly or indirectly, that such product is charcoal, unless there is also set forth in a clear and conspicuous manner and in conjunction therewith, a disclosure that such briquets are manufactured from lignite.

It is further ordered, That the complaint herein be dismissed as to respondent Dominion Briquettes & Chemicals, Ltd.

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 4th day of August 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Crawford Associates, Inc., a corporation, and Chester C. Crawford, Edmond A. Mathis, and Ethel R. Crawford, 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.
