

Complaint

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IN THE MATTER OF

RALPH RUPLEY TRADING AS
RALPH RUPLEY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 8424. Complaint, June 2, 1961—Decision, Sept. 19, 1961*

Consent order requiring Houston, Tex., furriers to cease violating the Fur Products Labeling Act by failing to label and invoice fur products with the true animal name of the fur used therein, failing to show on invoices the country of origin of imported furs, and failing in other respects to comply with labeling and invoicing requirements; by advertising in newspapers which represented prices of fur products as reduced from usual prices which were in fact fictitious, and contained earlier compared prices without giving the time of the latter; and by failing to maintain adequate records as a basis for price and value claims.

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 Ralph Rupley, an individual trading as Ralph Rupley, and Carl Stephanow, individually and as manager of the Ralph Rupley concern, and Ralph Rupley, Jr., individually and as assistant to the manager of the Ralph Rupley concern 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. Ralph Rupley is an individual trading as Ralph Rupley with his office and principal place of business located at 1000 Main Street, Houston, Texas. Carl Stephanow is an individual and manager of the Ralph Rupley concern with his office and principal place of business located at 1000 Main Street, Houston, Texas. Ralph Rupley, Jr. is an individual and assistant to the manager of the Ralph Rupley concern with his office and principal place of business located at 1000 Main Street, Houston, Texas. The said Ralph Rupley, Carl Stephanow and Ralph Rupley, Jr. control, direct and formulate the acts, practices and policies of the Ralph Rupley concern.

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 and distri-

bution, 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 misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder. Among such misbranded fur products, but not limited thereto, were fur products with labels which failed:

(1) to show the true animal name of the fur used in the fur product.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 26 of said Rules and Regulations.

PAR. 5. 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. Included among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

(1) To show the true animal name of the fur used in the fur product;

(2) To show the country of origin of imported furs used in the fur product.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that information required under Section

5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form in violation of Rule 4 of said Rules and Regulations.

PAR. 7. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 8. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Houston Post, a newspaper published in the City of Houston, State of Texas, and having a wide circulation in said State and various other States of the United States.

By means of said advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements:

(a) Represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of business, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

(b) Contained earlier compared prices without giving the time of such earlier compared prices in violation of Rule 44(b) of said Rules and Regulations.

PAR. 9. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting prices and values of fur products. Said representations were of the type covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. 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. 10. 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. Robert W. Lowthian supporting the complaint.

Bracewell, Reynolds & Patterson, by *Mr. Grant Cook*, Houston, Tex., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On June 2, 1961, pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission issued its complaint against the above-named respondents, charging them with violating the aforesaid Acts and the Rules and Regulations issued pursuant to the Fur Products Labeling Act by, *inter alia*, misbranding, failing to label properly, falsely and deceptively invoicing, and falsely and deceptively advertising fur products sold by respondents in commerce, as "commerce" is defined in the aforementioned Acts. A copy of the complaint was served upon respondents as required by law.

Thereafter, respondents appeared by counsel and entered into an agreement dated July 25, 1961, which was presented to this Hearing Examiner on August 8, 1961. The agreement purports to dispose of all of the issues in this proceeding as to all of the parties, and has been signed by all the respondents, their counsel, and counsel supporting the complaint. The agreement has been approved by the Director, the Assistant Director, and the Chief, Division of Enforcement, of the Bureau of Textiles and Furs of the Federal Trade Commission.

Said agreement contains a proposed consent cease and desist order which purports to dispose of this proceeding without the need for formal hearings. The agreement conforms to the requirements of § 3.21 and § 3.25 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, and contains:

A. An admission by respondents of all jurisdictional facts alleged in the complaint;

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) 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.

(4) The entire record on which the initial decision and the decision of the Commission may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided for other orders;

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C. Waivers of:

- (1) The making of findings of fact or conclusions of law;
- (2) Further procedural steps before the hearing examiner and the Commission;
- (3) Any right to challenge or contest the validity of the order entered in accordance with the agreement;

D. A statement that the signing of said 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.

Having considered the complaint and the agreement, including the proposed order, and being of the opinion that it provides an appropriate basis for disposition of this proceeding in all respects, the hearing examiner hereby accepts the agreement, which shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; makes the following jurisdictional findings; and issues the following order:

1. Respondent Ralph Rupley is an individual trading as Ralph Rupley, with his office and principal place of business located at 1000 Main Street, Houston, Texas. Carl Stephanow is an individual and manager of the Ralph Rupley concern, with his office and principal place of business located at 1000 Main Street, Houston, Texas. Ralph Rupley, Jr. is an individual and assistant to the manager of the Ralph Rupley concern, with his office and principal place of business located at 1000 Main Street, Houston, Texas. The said Ralph Rupley, Carl Stephanow and Ralph Rupley, Jr. control, direct and formulate the acts, practices and policies of the Ralph Rupley concern.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named.
3. The complaint states a cause of action against said respondents under the Federal Trade Commission Act and the Fur Products Labeling Act.
4. This proceeding is in the interest of the public.

ORDER

It is ordered, That Ralph Rupley, an individual trading as Ralph Rupley or under any other trade name, and Carl Stephanow, individually and as manager of the Ralph Rupley concern, and Ralph Rupley, Jr., individually and as assistant to the manager of the Ralph Rupley concern, 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 in commerce, or the 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 are 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:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of § 4(2) of the Fur Products Labeling Act;

B. Setting forth on labels affixed to fur products:

1. Information required under § 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

2. Information required under § 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information;

C. Failing to set forth separately on labels affixed to fur products composed of two or more sections containing different animal furs the information required under § 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section;

2. Falsely or deceptively invoicing fur products by:

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

B. Setting forth information required under § 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

3. 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:

A. Represents directly or by implication that the regular or usual 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;

B. Contains earlier compared prices without giving the time of such earlier compared prices;

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

4. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there

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are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

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 September 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents 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

JOSEPH ROTHENBERG, INC.

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

Docket 8060. Complaint, July 29, 1960—Decision, Sept. 20, 1961

Consent order requiring a Buffalo commission merchant of citrus fruit and produce to cease violating Sec. 2(c) of the Clayton Act by accepting from Florida suppliers unlawful brokerage on his own purchases for resale, such as a discount at the rate of 10 cents per 1½ bushel box, or a lower price reflecting such commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has been and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH. 1. Respondent Joseph Rothenberg, 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 146 Niagara Frontier, Buffalo, New York.

PAR. 2. Respondent is now, and for the past several years has been, engaged in business primarily as a wholesale grocer or commission merchant, buying, selling and distributing for its own account, citrus fruit and produce, as well as other food products, all of which are hereinafter sometimes referred to as food products. Respondent

purchases its food products from a large number of suppliers located in many sections of the United States. The annual volume of business done by respondent in the purchase and sale of food products is substantial.

PAR. 3. In the course and conduct of its business for the past several years, respondent has purchased and distributed, and is now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of New York, in which respondent is located. Respondent transports or causes such food products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United States to respondent who is located in the State of New York, or to respondent's customers located in said State, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondent and its respective suppliers or sellers of such products.

PAR. 4. In the course and conduct of its business for the past several years, but more particularly since January 1, 1959, respondent has been and is now making substantial purchases of food products for its own account for resale from some, but not all, of its suppliers, and on a large number of these purchases respondent has received and accepted, and is now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondent makes substantial purchases of citrus fruit from a number of packers or suppliers located in the State of Florida, and receives on said purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1 $\frac{3}{4}$ bushel box, or equivalent. In many instances respondent receives a lower price from the supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on its own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of subsection (c)

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of Section 2 of the Clayton Act, as amended, and an agreement by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceedings, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Joseph Rothenberg, 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 in the City of Buffalo, State of New York, with mailing address as 146 Niagara Frontier, Buffalo, New York.

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

ORDER

It is ordered, That respondent Joseph Rothenberg, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or produce for respondent's own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF
MICHIGAN FRUIT CANNERS, INC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d) OF THE
CLAYTON ACT*Docket 8095. Complaint, Aug. 25, 1960—Decision, Sept. 20, 1961*

Order dismissing without prejudice, for lack of evidence of competition, complaint charging canners of fruits and vegetables in Benton Harbor, Mich., with unlawfully discriminating among competing customers in paying promotional allowances.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Michigan Fruit Canners, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 9th & Oak Streets, Benton Harbor, Michigan.

PAR. 2. Respondent is now and has been engaged in the business of selling and distributing canned fruits and vegetables of many varieties, which it processes and cans at its plant in Benton Harbor, Michigan. Respondent sells and distributes its products to wholesalers and retailers, including voluntary groups and retail chain store organizations. Respondent's sales of its products are substantial, exceeding \$15,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Michigan to customers located in other States of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, and particularly since 1958, respondent paid or 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 by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were