

Complaint

72 F.T.C.

IN THE MATTER OF

RIGLEY DISTRIBUTING CO., INC., ET AL.

CONSENT ORDER, IN REGARD TO THE ALLEGED VIOLATION OF
SECTION 2 (c) OF THE CLAYTON ACT*Docket C-1255. Complaint, Sept. 25, 1967—Decision, Sept. 25, 1967*

Consent order requiring a Lawrence, Kansas, food broker to cease accepting illegal brokerage in connection with the sale of food products.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are 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 Rigley Distributing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 901 Kentucky Street, Lawrence, Kansas.

Respondent James Shirley is an individual who is president of Rigley Distributing Co., Inc. His principal office and place of business is the same as that of the corporate respondent. This respondent has operated Rigley Distributing Co., Inc., since 1964 and holds all shares of stock in personal "trust" for respondent Robert L. Fellers, former president of Griff's of America, Inc., which company operates its own hamburger stands and also franchises independently owned hamburger stands in approximately twenty (20) States located primarily in the Midwestern States.

Respondent Robert L. Fellers is an individual and an officer of respondent Rigley Distributing Co., Inc. For the past several years until November 30, 1966, he was also an officer and general manager of Griff's of America, Inc., and as such owned 49% of the stock in Griff's of America, Inc. Respondent Fellers' principal place of business is 901 Kentucky Street, Lawrence, Kansas.

PAR. 2. Respondent Rigley has operated as an agent or representative of respondent Fellers in his individual capacity.

Respondent Rigley has received commissions, brokerage or other compensations, in connection with the purchase of food commodities and other products for resale or use by Griff's of America, Inc., through its own and franchised hamburger stands.

Respondents Fellers and Shirley have arranged for the purchase and delivery of such products as aforesaid, and have received commissions, brokerage and other compensations paid or allowed by suppliers on sales resulting from such arrangements.

The various food products and other items used or resold by Griff's of America, Inc., are drop-shipped by the suppliers thereof to the individual hamburger stands, both company-owned and those independently owned and franchised units.

In addition to respondent Rigley Distributing Co., Inc., the company known as Griff's of America, Inc., operated a division called Rigley Distributing Company, under which name various food commodities and other products were purchased, from time to time during the past several years, for use of, and resale to, the hamburger stands, both franchised and company-owned. Similarly Griff's of America, Inc., also purchased indirectly through a wholesale house, Bricc Wholesalers, Inc., a Kansas corporation located in Iola, Kansas. Bricc Wholesalers, Inc., in fact, acted as agent.

PAR. 3. About the year 1963 respondent Fellers together with one Ray Mickle, an individual, caused a corporation by the name of United Sales, Inc., to be organized under Kansas laws for the purpose of operating a brokerage business, which would handle all sales of food commodities and other products to Griff's of America, Inc. Respondent Fellers and Ray Mickle each held 50% of the outstanding capital stock of United Sales, Inc.

All monies received by the said United Sales, Inc., as commissions or brokerage were to be divided between respondent Fellers and Mickle with 10% retained by Mickle and the remainder to either respondent Rigley or respondent Fellers direct.

The total annual sales to respondent Rigley, handled by United Sales, Inc., amounted to approximately \$300,000.

Some time during the year 1965, respondent Fellers sold his stock interest in United Sales, Inc., to Ray Mickle and thereafter entered into an arrangement with one Jack Rheuark, sole owner of a brokerage business known as Rheuark Brokerage, Inc., a Missouri corporation, located in Kansas City, Missouri.

Among the items used by Griff's of America, Inc., in large quantities were potatoes and paper products. Respondent Fellers agreed with Jack Rheuark that the Rheuark Brokerage, Inc., would handle all purchases of the above products by Griff's of America, Inc., provided that a portion of brokerage commissions would be rebated either to respondent Rigley or respondent Fellers. Thus, the arrangement was that with respect to brokerage on potatoes respondent Fellers was to receive an amount of approximately \$200

every two weeks from Rheuark. As to the purchase of paper products Rheuark was to receive the brokerage of 12½% and did rebate 90% of the resulting amount to either respondent Rigley or respondent Fellers direct. The remaining 10% of brokerage received by Rheuark was retained by that company. The dollar amounts involved have been substantial.

PAR. 4. In the course and conduct of their business for the past several years, the parties respondent named herein, directly or indirectly, have caused food commodities and other products, when purchased to be transported from the State of origin to destinations in other States. Thus, there has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, in said products across State lines between said respondents or Griff's Burger Bars and the sellers of said products.

PAR. 5. In the course and conduct of respondents' business for the past several years, the parties respondent have been collecting and receiving, directly or indirectly, commissions, brokerage or other compensations paid by suppliers on sales of products to Griff's of America, Inc., and company-operated and franchised hamburger stands. During the past several years the parties respondent have been acting for or on behalf of Griff's of America, Inc., and its franchised dealers, the purchasers, while receiving such commissions, brokerage and other compensations, directly or indirectly from suppliers.

It is further alleged, that the individual parties respondent have retained for their own use some of such commissions, brokerage or other compensations paid directly or indirectly by suppliers.

PAR. 6. The acts and practices of the parties respondent 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

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of subsection (c) of Section 2 of the Clayton Act, as amended; and

The respondents and counsel for the Commission having, pursuant to the Commission's 1963 Rules of Practice, executed an

agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated said Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, has accepted said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Rigley Distributing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 901 Kentucky Street, Lawrence, Kansas.

Respondents James Shirley and Robert L. Fellers are officers of Rigley Distributing Co., Inc. The principal office and place of business of respondent James Shirley is the same as that of said corporation and the principal place of business of respondent Robert L. Fellers is 901 Kentucky Street, Lawrence, Kansas.

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

ORDER

It is ordered, That respondents Rigley Distributing Co., Inc., a corporation, and its officers, agents, representatives and employees; James Shirley, individually and as an officer of Rigley Distributing Co., Inc.; and Robert L. Fellers, individually and as an officer of Rigley Distributing Co., Inc.; and their agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of food commodities and other products, in commerce, as "commerce" is defined in the amended 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 any of such products for respondents' own account or where respondents are the agents, representatives or other intermediaries acting for, or in behalf of, or are subject to, the direct or indirect control of, any buyer.

It is further 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 this order.
