
IN THE MATTER OF
GRIFF'S OF AMERICA, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-1257. Complaint, Sept. 25, 1967—Decision, Sept. 25, 1967

Consent order requiring a Dallas, Texas, corporation which operates and franchises hamburger stands in several States and an Iola, Kansas, food wholesaler, to cease inducing the payment of illegal brokerage fees, entering into total-requirement contracts, and fixing resale prices of any commodity.

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 the parties named in the caption and hereinafter referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission 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 Griff's of America, Inc., sometimes hereinafter referred to as Griff's, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 700 Tower Petroleum Building, Dallas, Texas.

Respondent Brice Wholesalers, Inc., sometimes hereinafter referred to as Brice's, 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 14 West Davis Street, Iola, Kansas.

Respondent Robert L. Fellers is an individual, sometimes referred to as Fellers, and from about the year 1960 to on or about November 30, 1966, has served as general manager and an officer of respondent Griff's and in such capacity has owned and controlled 49% of the outstanding capital stock of respondent Griff's.

Respondent Fellers principal place of business is now located at 901 Kentucky Street, Lawrence, Kansas.

PAR. 2. Respondent Griff's was organized in 1960 for the purpose of conducting a chain of hamburger stands under the name "Griff's Burger Bars," both company-owned and independently owned but franchised units.

Said respondent does business in some twenty States of the United States and its gross volume of business for the year 1965 including its franchised units, was approximately \$20,000,000.

In addition to operating and franchising hamburger stands, said respondent also purchases, either directly or indirectly, the supplies used by the various stands both company and independently owned units for shipment direct to the individual hamburger stands.

PAR. 3. Respondent Brice's for several years last past has been engaged in the purchase of food commodities and other products and in the sale and distribution thereof at wholesale, to various

purchasers located principally in the Midwestern section of the United States.

PAR. 4. Respondent Fellers, for several years prior to November 1966, has actively directed and supervised the operations of respondent Griff's and has executed, on behalf of Griff's, contracts, and agreements and has entered into understandings with various suppliers of food commodities and other products, for shipment to the various hamburger outlets.

PAR. 5. In the course and conduct of their business for several years last past, respondents have caused food commodities and other products when purchased to be transported from the State of origin of shipment to destinations in other States and there is now and has been at all times mentioned herein a constant course of trade and commerce, as "commerce" is defined in the Federal Trade Commission Act, in said food commodities and other products across State lines between said respondents and the sellers of such products.

PAR. 6. In the course and conduct of their business, respondents have been and are now in competition with others in the purchase and sale and distribution of food commodities and other products in commerce.

PAR. 7. Among the products used by the various hamburger stands, both those owned and operated by respondent Griff's and those franchised by said respondent but independently owned, are paper products.

Respondent Fellers, in or about the year 1964, contacted Continental Can Company offering to purchase the entire paper cup requirements for all of respondent Griff's hamburger stands, both company owned and franchised, in exchange for a special price from Continental Can Company.

As a result of negotiations between and among respondent Fellers, respondent Griff's and representatives of Continental Can Company, the latter agreed to pay a brokerage fee to a broker who would be designated to represent respondents Griff's and Fellers.

The further result of the aforementioned negotiations was that Continental Can Company agreed to and did furnish all of the requirements of respondent Griff's of paper cups for a period of several years from 1964 and also agreed to the nominal sale of such products to a wholesale house, to be designated by respondents Fellers and Griff's, which wholesale house was designated as respondent Brice's.

As a further part of the above arrangement, Continental Can

Company agreed to and did pay brokerage to United Sales, Inc., a brokerage company owned jointly by respondent Fellers and one Ray Mickle, and designated initially by Fellers as the broker to handle all sales of paper products by Continental Can Company for shipment to Griff's Burger Bars.

In addition to the foregoing, respondent Fellers, in or about the year 1964, contacted respondent Brice's and an agreement was entered into whereby all purchases of paper products on behalf of respondent Griff's from Continental Can Company were to be billed to respondent Brice's and were to be drop-shipped by Continental Can Company to the various hamburger stands located throughout the Midwest and Western States of the United States. Continental Can Company performed pursuant to the foregoing agreement.

It was further agreed among the respondents that all discounts or rebates received from the purchase of Griff's entire requirements of paper cups from Continental Can Company were to be divided between respondent Griff's and respondent Brice's in accordance with a prearranged and established formula agreed to among all respondents.

Respondents also have agreed to and have fixed the prices at which such paper products purchased from Continental Can Company would be and have been resold to the various hamburger stands, including the independently owned and operated units.

In connection with the above referred-to agreement and understanding, early in the year 1966 respondent Brice's agreed to and did advance to respondent Griff's an amount of \$35,000. Most of this amount constituted an advance payment of respondent Griff's share of discounts or rebates to be realized from the sale of paper cups by Continental Can Company throughout the remainder of the year 1966, and was, in fact, realized from such sales as aforesaid. The remainder of said advance was a rebate received from Brice's on purchases of syrups and other products. Rebates derived from paper cup purchases were designated by respondents as "advertising allowances."

PAR. 8. The acts and practices of respondents, as herein alleged, have been to the prejudice of the public and to competitors of respondents; have a tendency to hinder, suppress and injure competition in the sale and distribution of such paper cups as are used in the operation of Griff's Burger Bars; and have a tendency to hinder, suppress and injure competition between Griff's Burger Bars, and independently owned hamburger stands, including those units operated under a franchise from Griff's.

Such acts and practices constitute unfair methods of competition in commerce, or unfair or deceptive acts or practices in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

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 the Federal Trade Commission Act; 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 Griff's of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 700 Tower Petroleum Building, Dallas, Texas.

Respondent Brice Wholesalers, 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 14 West Davis Street, Iola, Kansas.

Respondent Robert L. Fellers is an individual, formerly president of Griff's of America, Inc., with his office and principal place of business located at 901 Kentucky Street, Lawrence, Kansas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Griff's of America, Inc., and Brice Wholesalers, Inc., each a corporation, and their officers, agents, representatives and employees, and respondent Robert L. Fellers, an individual, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase or sale of any commodity in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any agreement, understanding, combination, conspiracy or planned common course of action, between or among any of said respondents or between any of said respondents and others not parties hereto to do or perform any of the following acts or things:

(1) Induce any seller of any commodity to pay or allow a brokerage fee, commission or discount, to an agent or representative of any buyer;

(2) Negotiate with any seller for the purchase of any commodity on condition that the buyer's entire requirements be supplied by such seller, provided such seller pay a brokerage fee to an intermediary specified by respondents and/or that said seller recognize an intermediary specified by said respondents to act as a wholesaler when said wholesaler is, in fact, an agent of or subject to the control of, said respondents or any of them.

(3) Fixing or establishing prices for resale of any commodity by any means to any retailer.

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.