

Complaint

IN THE MATTER OF

ARDEN-MAYFAIR, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(c) OF THE CLAYTON ACT*Docket C-1748. Complaint, June 3, 1970—Decision, June 3, 1970*

Consent order requiring a Los Angeles, Calif., chain of supermarket grocery stores (Arden-Mayfair) and a Los Alamitos, Calif., brokerage firm (Chambossé) to cease violating Sec. 2(c) of the Clayton Act by engaging in such brokerage practices as Chambossé receiving brokerage or other payments from sellers of grocery products while under the direct or indirect control of Arden-Mayfair.

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 violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended, (15 U.S.C. Section 13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Arden-Mayfair, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 2500 Garfield Avenue, Los Angeles, California.

PAR. 2. Respondent Arden-Mayfair, Inc., has been and is now engaged primarily in the retail distribution of grocery products through several operating divisions. The principal operating division of respondent Arden-Mayfair, Inc., is the Mayfair Market Division which operates a large number of retail supermarkets. As of July 24, 1969, the Mayfair Market Division of respondent Arden-Mayfair, Inc., operated a total of 211 supermarkets in the States of California, Arizona, Nevada, Oregon, and Washington. Respondent Arden-Mayfair, Inc.'s volume of business is substantial, totalling in excess of \$568 million annually with the Mayfair Market Division accounting for approximately 77 percent of total sales.

PAR. 3. Respondent Chambossé Brokerage Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 11110 Los Alamitos Blvd., Los Alamitos, California.

Respondent Halsey K. Chambossé, an individual, is president of

Complaint

77 F.T.C.

corporate respondent Chambossé Brokerage Company, and is located at the same address as said corporate respondent and owns a substantial portion of its stock. He formulates, directs and controls the acts, practices, and policies of said corporate respondent, including the acts and practices hereinafter described.

PAR. 4. Respondent Chambossé Brokerage Company has been and is now engaged in the brokerage business, purportedly representing various seller-principals located throughout the United States in connection with the sale and distribution of grocery products. A substantial part of the business done by respondent Chambossé Brokerage Company consists of arranging sales of private label grocery products to respondent Arden-Mayfair, Inc. In allegedly representing seller-principals in sales to Arden-Mayfair, Inc., respondent Chambossé Brokerage Company has demanded and received commissions, brokerage fees or other compensations from such sellers.

PAR. 5. Respondent Chambossé Brokerage Company in the course and conduct of its brokerage business has been and is now effecting sales of grocery products by sellers located in the State of California and other States, and purchases by respondent Arden-Mayfair, Inc., as well as other buyers located in various States of the United States in commerce, as "commerce" is defined in the Clayton Act. Said respondent has transported or caused such products to be transported from the sellers' places of business to the buyers' places of business located in other States. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in effecting purchases and sales of such products by said respondent Chambossé Brokerage Company.

PAR. 6. In the course and conduct of its business for the past several years, respondent Arden-Mayfair, Inc., has purchased and resold, and is now purchasing and reselling grocery products in commerce, as "commerce" is defined in the Clayton Act which it purchases from sellers located in several States of the United States other than the State of California in which respondent Arden-Mayfair, Inc., is located. Said respondent purchases grocery products and causes them to be transported from the sellers' places of business in various States of the United States to its warehouses and retail stores in the State of California and various other States in the United States. Thus, there has been and is now a continuous course of trade in commerce by the purchase and resale of said products by respondent Arden-Mayfair, Inc.

PAR. 7. In the course and conduct of its business, respondent Arden-Mayfair, Inc., has been and is now utilizing the services of respond-

ent Chambossé Brokerage Company as a broker or agent in the purchase of private label grocery products from various sellers. On September 6, 1965, a predecessor of respondent Chambossé Brokerage Company and respondent Arden-Mayfair, Inc., entered into an employment contract which stated in pertinent part as follows:

This will confirm our oral agreement that all grocery items, including frozen foods, which are purchased for private label by the Market Division of Arden-Mayfair, Inc. (herein referred to as "Arden"), through brokers, will be purchased by Arden through Beebe-Chambossé Co. (herein referred to as Beebe).

The contract also contains the following condition relating to individual respondent Halsey K. Chambossé who formerly was employed by respondent Arden-Mayfair, Inc., as a procurement officer of private label merchandise:

It is understood that you will, at all times during the term of this agreement, retain voting stock control of Beebe and will also act as its Chief Executive Officer.

The contract further recites:

that all brokerage fees will be paid by the vendors and Arden will not be charged with any costs or other compensation.

This contract was ratified by the board of directors of respondent Arden-Mayfair, Inc., on December 6, 1965. Shortly thereafter the name of Beebe-Chambossé Co. was changed to Chambossé Brokerage Company. Since that date respondent Chambossé Brokerage Company and its predecessor have rendered numerous brokerage services for respondent Arden-Mayfair, Inc., and respondent Chambossé Brokerage Company has acted and is now acting as its purchasing agent or broker on a substantial amount of respondent Arden-Mayfair Inc.'s purchases of private label grocery products. In connection with such transactions, Chambossé Brokerage Company is subject to and under the direct or indirect control of respondent Arden-Mayfair, Inc., and has been and is now collecting and receiving brokerage, commissions or other compensation from sellers of grocery products.

PAR. 8. Respondent Arden-Mayfair, Inc., has received and is now receiving valuable brokerage services from respondent Chambossé Brokerage Company without paying either directly or indirectly any brokerage, commission or other compensation to said broker. At the same time, respondent Chambossé Brokerage Company has and is now collecting and receiving directly and indirectly commissions or other compensation from sellers when, in fact, it has been and is now acting for or in behalf of respondent Arden-Mayfair, Inc., or has

Decision and Order

77 F.T.C.

been or is now subject to the direct or indirect control of Arden-Mayfair, Inc.

PAR. 9. The aforesaid acts and practices of respondents and each of them in receiving and accepting, directly or indirectly, anything of value as a commission, brokerage or other compensation or any allowance or discount in lieu thereof from sellers, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violations of subsection 2(c) of Section 2 of the Clayton Act, as amended, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Arden-Mayfair, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 2500 Garfield Avenue, in the city of Los Angeles, State of California.

Respondent Chambossé Brokerage Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 11110 Los Alamitos Boulevard, in the city of Los Alamitos, State of California.

Respondent Halsey K. Chambossé is an officer of Chambossé Brokerage Company. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondent Arden-Mayfair, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the purchase of grocery products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Receiving or accepting services or anything of value from Chambossé Brokerage Company or any other broker, in connection with the purchase of grocery products, when such broker, agent, representative or intermediary is receiving or accepting anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof from the seller while acting for or in behalf of or subject to the direct or indirect control of respondent.

2. 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 grocery products for respondent's own account.

It is further ordered, That respondents Chambossé Brokerage Company, a corporation, and its officers and Halsey K. Chambossé, individually and as an officer of Chambossé Brokerage Company, and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase or sale of grocery products 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 grocery products for respondents' own account or where respondents are the agent, representative or intermediary acting for, or in behalf of, or subject to the direct or indirect control of, any buyer.

Complaint

77 F.T.C.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

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.

By the Commission, with Commissioner Elman not concurring.

IN THE MATTER OF

OCCIDENTAL PETROLEUM CORPORATION, ET AL.