

Complaint

IN THE MATTER OF

SALES MARKETING SERVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 2 (C) OF THE CLAYTON ACT*Docket C-2411. Complaint, May 31, 1973—Decision, May 31, 1973.*

Consent order prohibiting a broker of nonfood grocery products and a wholesaler of these items in New Orleans, La., from receiving unlawful brokerage payments.

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 Sales Marketing Services, Inc., hereinafter sometimes referred as "SMS," is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its office and principal place of business located at 4500 Melpomene Street, New Orleans, Louisiana.

Respondents Nat Friedler and Richard B. Kaufman, Sr., individuals, are president and secretary respectively of corporate respondent SMS. They own and, at all times mentioned herein have owned, all or substantially all of the stock of SMS, and they formulate, direct, and control the acts, practices and policies of SMS, including the acts and practices hereinafter described.

PAR. 2. Respondent SMS has been and is now engaged in business as a broker, effecting purchases of nonfood grocery products by wholesalers, department stores and headquarter chain groups in Louisiana, Mississippi, Arkansas, and Alabama, from sellers located in the various States of the United States other than the States of Louisiana, Mississippi, Arkansas, and Alabama. In such capacity, respondent has demanded and received commissions, brokerage or other compensation from sellers in connection with effecting purchases of nonfood products. The annual volume of business of SMS, in its capacity as a broker in effecting purchases and sales of nonfood products,

is substantial, amounting to approximately \$650,000 during its first fiscal year which ended November 30, 1971, on which it received brokerage in the amount of approximately \$34,298.

PAR. 3. Respondent SMS, in the course and conduct of its business as a broker, has been and is now effecting purchases of nonfood products by buyers located in Louisiana, Mississippi, Arkansas and Alabama, from sellers located in the various other 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 SMS.

PAR. 4. Respondent Kitchenaides, Inc., hereinafter sometimes, referred to as Kitchenaides, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana with its office and principal place of business located at 737 South Cortez Street, New Orleans, Louisiana.

Kitchenaides is jointly owned by Nat Friedler and Richard B. Kaufman, Sr. who are chairman of the board of directors and treasurer, and president respectively of Kitchenaides. Nat Friedler and Richard B. Kaufman, Sr. own all or substantially all of the corporate stock of Kitchenaides. They formulate, direct and control the acts, practices and policies of Kitchenaides, including the acts and practices hereinafter described.

Respondent Kitchenaides is engaged in wholesaling a line of nonfood products for all classes of food stores. The products include notions, housewares, health and beauty aids, hair care items, toys, stationery and school supplies, pet supplies and light bulbs. Distribution to chain and independent supermarkets and convenience food stores by Kitchenaides includes accounts located in Louisiana, Mississippi, Alabama, and northwestern Florida. Respondent Kitchenaides' total sales in 1971 amounted to approximately \$6,500,000.00. Kitchenaides has maintained a continuous course of trade in commerce as "commerce" is defined in the aforesaid Clayton Act.

PAR. 5. On or about August 20, 1970, Nat Friedler and Richard B. Kaufman, Sr. incorporated SMS in Louisiana and commenced business as a broker of nonfood items and in that capacity represented various principals located outside the State of Louisiana in the sales of nonfood items to Kitchenaides. SMS

has sold and continues to sell to Kitchenaides on behalf of various principals located outside the State of Louisiana. In their capacity as broker of nonfood products, respondents Nat Friedler and Richard B. Kaufman, Sr. have collected and continue to collect substantial amounts as commissions or brokerage fees on sales to Kitchenaides. During the period February 1971 through February 1972, SMS collected brokerage of approximately \$5,377.80 on sales of approximately \$93,773.16 to Kitchenaides.

PAR. 6. Nat Friedler and Richard B. Kaufman, Sr. own and at all times mentioned herein have owned all or substantially all of the stock of both corporate respondents, and as officers of both corporate respondents exercise authority and control over the business operations of both companies, including purchase and sales policies. As a result of this joint ownership and control the purchases of nonfood products made by Kitchenaides through SMS is for the benefit of Nat Friedler and Richard B. Kaufman, Sr. and is the same or has the same effect as if they were purchasing for their own account and receiving brokerage on said purchases.

PAR. 7. The acts and practices of respondents and each of them since August 1970, in receiving and accepting commissions, brokerage fees, and allowances on purchases of nonfood products in commerce made directly or indirectly for their own account, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman 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 New Orleans Regional Office 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 thereafter 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 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sales Marketing Services, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 4500 Melpomene Street, New Orleans, Louisiana.

Respondents Nat Friedler and Richard B. Kaufman, Sr., are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, including the acts and practices hereinafter described, and their address is the same as that of said corporation.

2. Respondent Kitchenaid, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 737 South Cortez Street, New Orleans, Louisiana.

Respondents Nat Friedler and Richard B. Kaufman, Sr., are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, including the acts and practices hereinafter described, and their address is the same as that of said corporation.

3. 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 Sales Marketing Services, Inc., a corporation, its successors and assigns, and its officers and Nat Friedler and Richard B. Kaufman, Sr., individually and as officers of Sales Marketing Services, Inc., and respondents' agents, representatives and employees, directly or through any

corporation, subsidiary, division, or other device, in or in connection with the purchase or sale of nonfood 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 nonfood 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.

It is further ordered, That Kitchenaid, Inc., a corporation, its successors and assigns, and its officers and Nat Friedler and Richard B. Kaufman, Sr., individually and as officers of Kitchenaid, Inc., and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in or in connection with the purchase or sale of nonfood products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Receiving or accepting, directly or indirectly, anything of value from Sales Marketing Services, Inc., or any other broker, in connection with the purchase of nonfood 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 the respondents.

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 nonfood products for respondents' own account.

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.

Complaint

IN THE MATTER OF
LADZIN NOVELTY CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-2412. Complaint, June 4, 1973—Decision, June 4, 1973.

Consent order prohibiting a New York City manufacturer and distributor of feather fabrics from marketing products which fail to conform to an applicable standard of flammability or regulation established, amended, or continued in effect pursuant to the provisions of the Flammable Fabrics Act, as amended.

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 Ladzin Novelty Co., Inc., a corporation, and Seymour Ladzin, individually and as an officer of said 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 Ladzin Novelty Co., 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 30 West 36th Street, New York, New York.

Respondent Seymour Ladzin is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his office and principal place of business is the same as that of said corporation.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacture and distribution of feather fabrics. The aforesaid products are shipped or delivered from respondents' place of business in the State of New York to respondents'