

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.

IN THE MATTER OF

FROZEN FOOD FORUM, INC., ET AL.

ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECTION 2(C) OF
THE CLAYTON ACT

Docket 8890. Complaint, June 12, 1972 — Decision, Oct. 29, 1974

Order dismissing complaint against an Atlanta, Ga., buying group composed of 72 distributors of grocery products, which alleged respondents had violated Section 2(c) of the Clayton Act by receiving illegal brokerage payments.

Appearances

For the Commission: *L. P. Parker, Joel S. Thwaites, Ronald C. Cougill and Charles C. Murphy, Jr.*

For the respondents: *Arnall, Golden & Gregory, Atlanta, Ga., and Chickering & Gregory, San Francisco, Calif.*

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 Frozen Food Forum, Inc., sometimes hereinafter referred to as respondent FFF, is a corporation organized in 1954 and existing under the laws of the State of Delaware with its home office and principal place of business at the Fulton Federal Building, 11 Pryor Street, S.W., Atlanta, Ga. Respondent FFF was in 1967 and 1968 and is now owned by some 72 stockholder-members, each of which is a separate corporate or other entity engaged in business as a distributor of grocery products which are sold to institutional users of such products in various parts of the United States.

PAR. 2. Respondents Richard M. Page, 1405 Jefferson Highway, New Orleans, La.; Julius Levitt, 777 West Whitehall Street, Atlanta, Ga.; and Jabie S. Hardin, 1186 Airways Boulevard, Memphis, Tenn., all were officers, directors and members of the Executive and Buyers Committee of respondent FFF in 1967 and 1968 and other years and in these capacities, they and each of them has exercised supervision, direction and control of the operations of respondent FFF, while at the same time, each of these individual respondents was also an officer of one of the individual stockholder-members of respondent FFF which are named as respondents herein.

PAR. 3. Respondent Winton Sales Company, sometimes hereinafter referred to as respondent Winton, 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 at 3379 Peachtree Road, N.E., Atlanta, Ga.. Respondent Winton handled purchases of grocery products for respondent FFF and its stockholder-members from 1954 and continuing through 1967 and 1968 to the present time.

PAR. 4. Respondent Stewart-Tucker, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its home office and place of business at 3000 Sand Hill Road, Menlo Park, Calif. Respondent Stewart-Tucker, Inc. in 1966, 1967 and a part of 1968 handled purchases of grocery products for respondent FFF and its stockholder-members.

Effective Apr. 30, 1968, respondent Stewart-Tucker, Inc. sold its FFF business to respondent Howard B. Carper, who had been employed by respondent Stewart-Tucker, Inc. as its Atlanta office manager handling FFF purchases. Beginning May 1, 1968 and continuing to the present date, respondent Stewart-Tucker, Inc. has continued to handle purchases of grocery products for other buying groups of institutional food distributors.

PAR. 5. Respondent Carper Sales Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada with its home office and principal place of business at 120 West Wieuca Road, N.E., Atlanta, Ga. Respondent Howard B. Carper owns and controls this corporation. In 1967 and until Apr. 30, 1968, respondent Howard B. Carper was an employee of respondent Stewart-Tucker, Inc., and in this capacity he was active in handling purchases of grocery products for respondent FFF and its stockholder-members.

Effective May 1, 1968, respondent Howard B. Carper acquired from respondent Stewart-Tucker, Inc. its business of handling purchases of grocery products for respondent FFF and its stockholder-members and

since that date, respondents Carper Sales Co., Inc. and Howard B. Carper have handled purchases of grocery products for respondent FFF and its stockholder-members. These respondents will sometimes be referred to collectively herein as Carper.

PAR. 6. Each of the following named respondents in 1967 and 1968 and continuing to the present time was a corporation organized, operating and doing business under the laws of the state listed and with its principal office and place of business at the address listed and in 1967 and 1968 each was and at the present time is a stockholder-member of respondent FFF and each in 1967 and 1968 had at least one of its officers named as a director of respondent FFF and each was engaged in business as a distributor of grocery products to the institutional trade.

Respondent Name	State of Incorporation	Principal Office and Place of Business
Arrow Food Distributors, Inc.	Delaware	1405 Jefferson Highway New Orleans, La.
Hardin's, Inc.	Tennessee	1186 Airways Boulevard Memphis, Tenn.
Capitol Fish Company	Georgia	771 Whitehall Street Atlanta, Ga.
Gordon Food Service, Inc.	Michigan	333 50th Street Grand Rapids, Mich.
L. M. Sandler and Sons, Inc.	Virginia	1600 Hodgeman Road Norfolk, Va
Tenneva Frozen Foods, Inc.	Virginia	950 Fairview Street Bristol, Va.
Bob Blanke Sales Company, Inc.	Alabama	1545 Holton Street Florence, Ala.
Marin Products Company, Inc.	California	55 Frosty Lane, Ignacio San Rafael, Calif.
Saunders Food Distributors, Inc.	Delaware	604 South Palafox Street Pensacola, Fla.
Rotelle, Inc.	Pennsylvania	Route 309, Bethlehem Pike Spring House, Pa.
Frostex Foods, Inc.	Texas	1179-A Springdale Road Austin, Tex.
Artic Frozen Foods, Inc.	—	2600 N.E. 6th Street Amarillo, Tex.

PAR. 7. At all times since 1954, and to the present date, respondent FFF has owned and controlled the use of various proprietary labels, including "Frosty Acres," "Frosty Seas" and "Garden Delight" and it has by itself and through its agents, including respondents Page, Levitt, Hardin, Winton, Stewart-Tucker, Inc., and Carper, contracted and

agreed with suppliers of grocery products to pack such products under the said proprietary labels for sale by the suppliers to its stockholder-members.

Sales of grocery products bearing FFF proprietary labels by suppliers to FFF stockholder-members since 1954 and to the present time have been substantial. For example, in the fiscal year ending Apr. 30, 1968, such sales are estimated at not less than \$20 million and they are estimated at similar amounts for other years.

PAR. 8. Corporate respondent FFF, individual respondents Page, Levitt, Hardin and corporate respondents Winton and Stewart-Tucker, Inc., and respondent Carper and each of the corporate respondents named in Paragraph Six hereof, have been and now are engaged in commerce, as "commerce" is defined in the Clayton Act in that they and each of them has caused and is causing grocery products to be purchased and shipped from sellers located in different states in stockholder-members of FFF located in other states, including those stockholder-members who are named in Paragraph Six hereof and there has been and is now a constant current of commerce in such products, and all of the said respondents have been and are instrumentalities in the stream of interstate commerce.

Respondent stockholder-members whose names are listed in Paragraph Six hereof are also engaged in commerce, as "commerce" is defined in the Clayton Act, in that they purchase through respondents FFF, Winton, Stewart-Tucker, Inc., and Carper grocery products from various supplier-sellers located in states other than the states where such respondent stockholder-members are located and they receive shipments of such products into the states where such respondent stockholder-members' places of business are located and they resell such products to institutional food users in various states and there is now and has been a constant current of commerce in such products.

COUNT I

Alleging violation by respondent Winton Sales Company of Section 2(c) of the Clayton Act, as amended.

PAR. 9. The allegations of Paragraphs One through Eight of this complaint are incorporated in this count by reference as if fully set forth verbatim.

PAR. 10. In the course and conduct of its business as outlined in Paragraphs One through Eight hereof, respondent Winton Sales Company has received or accepted from suppliers of grocery products something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection with the sale or

purchase of goods, wares, or merchandise, in which sales or purchases respondent Winton Sales Company was, in fact, the agent, representative or other intermediary of the buyers of such products, or was subject to the direct or indirect control of the buyers of such products, who did not pay or grant such compensation.

Therefore, the acts of respondent Winton Sales Company as described herein are unlawful within the intent and meaning of Section 2(c) of the Clayton Act, as amended.

COUNT II

Alleging violation by respondent Stewart-Tucker, Inc. of Section 2(c) of the Clayton Act, as amended.

PAR. 11. The allegations of the Paragraphs One through Eight of this complaint are incorporated in this count by reference as if fully set forth verbatim.

PAR. 12. In the course and conduct of its business as outlined in Paragraphs One through Eight hereof, respondent Stewart-Tucker, Inc. has received or accepted from suppliers of grocery products something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection with the sale or purchase of goods, wares, or merchandise, in which sales or purchases respondent Stewart-Tucker, Inc. was, in fact, the agent, representative or other intermediary of the buyers of such products, or was subject to the direct or indirect control of the buyers of such products, who did not pay or grant such compensation.

Therefore, the acts of respondent Stewart-Tucker, Inc. as described herein are unlawful within the intent and meaning of Section 2(c) of the Clayton Act, as amended.

COUNT III

Alleging violation by respondents Carper Sales Co., Inc., and Howard B. Carper of Section 2(c) of the Clayton Act, as amended.

PAR. 13. The allegations of Paragraphs One through Eight of this complaint are incorporated in this count by reference as if fully set forth verbatim.

PAR. 14. In the course and conduct of their business as outlined in Paragraphs One through Eight hereof, respondents Carper Sales Co., Inc., and Howard B. Carper have received or accepted from suppliers of grocery products something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection with the sale or purchase of goods, wares, or merchandise, in which sales or purchases respondents Carper Sales Co., Inc., and How-

and B. Carper were, in fact, the agent, representative or other intermediary of the buyers of such products, or were subject to the direct or indirect control of the buyers of such products, who did not pay or grant such compensation.

Therefore, the acts of respondents Carper Sales Co., Inc., and Howard B. Carper as described herein are unlawful within the intent and meaning of Section 2(c) of the Clayton Act, as amended.

COUNT IV

Alleging violations by respondents FFF, Page, Levitt, Hardin and the stockholder-members listed as respondents in Paragraph Six of this complaint of Section 2(c) of the Clayton Act, as amended.

PAR. 15. The allegations of Paragraphs One through Eight of this complaint are incorporated in this count by reference as if fully set forth verbatim.

PAR. 16. In the course and conduct of their business, respondents FFF, Page, Levitt, Hardin and the respondent stockholder-members of FFF listed in Paragraph Six hereof have received and are now receiving something of value, namely valuable brokerage services from respondents Winton and Carper and have received valuable brokerage services from respondent Stewart-Tucker, Inc., in connection with purchases of grocery products by stockholder-members of FFF, without paying directly or indirectly any brokerage, commission or other compensation to respondents Winton, Stewart-Tucker, Inc., or Carper. At the same time, respondent Stewart-Tucker, Inc. has and respondents Winton and Carper have and are now collecting and receiving directly and indirectly commissions or other compensation from sellers in connection with purchases of grocery products by stockholder-members of FFF when, in fact, respondent Stewart-Tucker, Inc. was and respondents Winton and Carper were and are now the agents, representatives or other intermediaries of respondents FFF, Page, Levitt, Hardin and the stockholder-members of FFF listed in Paragraph Six of this complaint and were acting, in fact, for or in behalf of the respondents FFF, Page, Levitt, Hardin and the stockholder-members of FFF, including but not confined in those listed in Paragraph Six hereof, and respondent Stewart-Tucker, Inc. was and respondents Winton and Carper have been or are now subject to the direct or indirect control of the said respondents in effecting these transactions.

The aforesaid acts and practices of respondents FFF, Page, Levitt, Hardin and the stockholder-members of FFF listed in Paragraph Six hereof, and each of them, in receiving or accepting something of value, namely the services of respondents Winton, Stewart-Tucker, Inc. and

Carper 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.

ORDER

The Commission, on Aug. 5, 1974 [p. 221 herein], ordered complaint counsel to file a brief limited to the question "whether in view of the unavailability of evidence this proceeding should be dismissed," and granted respondents the right to file a reply brief limited to the same question.

Complaint counsel recommend that the proceeding be dismissed on the ground that the evidence upon which complaint counsel must rely to prove the allegations of the complaint is too remote in point of time to support an order to cease and desist.

Respondents, in their answering brief, take the position that either the complaint should be dismissed with prejudice or, in the alternative, they should be granted compulsory process to discover the circumstances of the Commission's order dated Aug. 15, 1968, which denied respondents' motion to quash 1968 investigative subpoenas *duces tecum*.

Because the Commission believes that to allow respondents discovery of past and present Commissioners and staff would be disruptive of the agency's function, the Commission has determined to not grant respondents discovery. The effect of this action is to deprive complaint counsel of documents updating respondents' 1968 submissions. These submissions relate to events occurring long before 1968. As a consequence, complaint counsel, in the trial of this matter, would be required to rely upon evidence that is not sufficiently current to sustain the allegations in the complaint. The Commission has, therefore, determined that said complaint in this matter will be dismissed.

Respondents' request that the Commission dismiss the complaint with prejudice is denied. Respondents' request for oral argument is also denied.

It is ordered, That the complaint be, and it hereby is, dismissed without prejudice to the right of the Commission to issue a new complaint or to take such further action or other action against the respondents at any time in the future.

Complaint

84 F.T.C.

IN THE MATTER OF

KIRBY OF NORTH PROVIDENCE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket C-2590. Complaint, Nov. 1, 1974 — Decision, Nov. 1, 1974*

Consent order requiring a North Providence, R.I., retailer of vacuum cleaners and related products, devices, parts and attachments, among other things to cease using misrepresentations to sell its products and violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of credit, such information as required by Regulation Z of said Act.

Appearances

For the Commission: *Lois M. Woocher.*

For the respondents: *William C. Hillman, Strauss, Factor, Chernick & Hillman, Providence, R.I.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Kirby of North Providence, Inc., a corporation, and Emanuel Toro, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending 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 Kirby of North Providence, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its principal office and place of business located at 1883 Mineral Spring Avenue, North Providence, R.I.

Respondent Emanuel Toro is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.