

Complaint

IN THE MATTER OF
KEYSTONE WIRE CLOTH COMPANY, ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(c) OF THE CLAYTON ACT*Docket 7297. Complaint, Nov. 6, 1958—Decision, Apr. 9, 1959*

Consent order requiring a manufacturer of wire cloth with principal place of business in Hanover, Pa., to cease violating Sec. 2(c) of the Clayton Act by paying commissions on sales to the broker who was president and treasurer of the corporate buyer and, with those related to him, owned more than 99% of its common stock; and requiring said buyer and said broker president to cease accepting any brokerage or allowance in lieu thereof in connection with such purchases.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have violated and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Keystone Wire Cloth Company, hereinafter sometimes referred to as the seller respondent, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Hanover, Pa. Said respondent is now, and for some time last past has been, engaged in the business of manufacturing, selling and distributing wire cloth, including insect wire screening, with annual gross sales amounting to approximately \$3,500,000.

PAR. 2. Respondent Sherwatt Equipment & Manufacturing Co., Inc., hereinafter sometimes referred to as the buyer respondent, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 47 Murray Street, New York, 7, N.Y.

Respondent Arthur Watts is president and treasurer of said corporation and directs, formulates and controls its policies, acts and practices. It is now, and for sometime last past has been, engaged in the business of both manufacturing wire cloth and in

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buying and reselling wire cloth manufactured by others. Its annual gross sales amount to approximately \$500,000.

PAR. 3. Respondent Arthur Watts, hereinafter sometimes referred to as the broker respondent, is an individual, and is a member of the board of directors and president and treasurer of buyer respondent, owning individually more than 50% of all classes of its stock outstanding and in conjunction with those related to him more than 99% of the common stock and 90% of the preferred stock outstanding. He occupies the same business premises as does the buyer respondent, and acts for and in its behalf in its business dealings. He also acts as broker, agent, or representative for the seller respondent herein in the sale of its wire cloth, his commissions or compensation on sales ranging from 2% to 4% thereof. His business address is 47 Murray Street, New York 7, N.Y.

PAR. 4. In the course and conduct of its business the seller respondent makes substantial sales of its products through the broker respondent to the buyer respondent. On such sales and purchases the broker respondent has been and is now receiving or accepting something of value as a commission, brokerage, or other compensation from the seller respondent, which receipt or acceptance has the same effect as if the buyer respondent had received or accepted such compensation, or an allowance or discount in lieu thereof, and in turn distributed it to the broker respondent.

PAR. 5. Said respondents, directly or indirectly, cause such products, when sold and purchased, to be transported from the state of origin to destinations in another state. There has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act, in such products between said respondents.

PAR. 6. The acts and practices of respondents as alleged herein are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Brockman Horne for the Commission.

Lamb & Long, by *Mr. George P. Lamb*, of Washington, D.C., for Keystone Wire Cloth Company.

Pofcher, Schluskel & Katcher, by *Mr. Munroe F. Pofcher*, of New York, N.Y., for Sherwatt Equipment & Manufacturing Company, Inc., and Arthur Watts.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, the Federal Trade Commission on November 6, 1958, issued and subsequently served its complaint in this proceeding against the above-named respondents.

On February 20, 1959, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents, and, when so entered, it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Keystone Wire Cloth Company is a corporation existing and doing business under and by virtue of the laws of

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the State of Pennsylvania, with its office and principal place of business located at Hanover, Pa.

Respondent Sherwatt Equipment & Manufacturing Company, Inc., is a corporation 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 47 Murray Street, New York, N.Y.

Respondent Arthur Watts is an individual and is president and treasurer of said Sherwatt Equipment and Manufacturing Company, Inc. He directs, formulates and controls its policies, acts and practices. His business address is 47 Murray Street, New York, N.Y.

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

ORDER

It is ordered, That respondent Keystone Wire Cloth Company, a corporation, and its officers, directors, representatives, agents or employees, directly or indirectly, or through any corporate or other device, in connection with the sale of wire cloth in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of, such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of its wire cloth to such buyer.

It is further ordered, That the respondent Sherwatt Equipment & Manufacturing Company, Inc., a corporation, and its officers, and Arthur Watts, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or indirectly, or through any corporate or other device, in connection with the purchase or sale of wire cloth 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 wire cloth by or for the account of respondent Sherwatt Equipment & Manufacturing Company, Inc., or upon any other purchase or sale where either respondents

Sherwatt Equipment & Manufacturing Company, Inc., or Arthur Watts, or both, are the agents, representatives, or other intermediaries acting for or in behalf of, or subject to the direct or indirect control of, the buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of April 1959, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

IN THE MATTER OF
EILER'S FURS

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 7321. Complaint, Dec. 2, 1958—Decision, Apr. 9, 1959

Consent order requiring a furrier in Huron, S. Dak., to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements, and by advertising in newspapers which failed to disclose that certain fur products contained artificially colored fur and to disclose the country of origin of imported furs, and which claimed percentage savings and reductions from regular prices without keeping adequate records as a basis therefor.

Mr. Floyd Collins for the Commission.

Respondents, *pro se*.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On December 2, 1958, the Federal Trade Commission issued a complaint charging Ethel Eilers and William Eilers, individually and as copartners trading as Eilers' Furs, (erroneously referred to in the caption of the complaint as Ethel Eiler and William Eiler, individually and as copartners trading as Eiler's Furs) hereinafter referred to as respondents, with falsely and deceptively misbranding, invoicing and advertising certain of their fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

After issuance and service of the complaint, the respondents and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the director and the assistant director of the Bureau of Litigation. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of find-

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ings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondents Ethel Eilers and William Eilers, are individuals and copartners, trading and doing business as Eilers' Furs. Respondents' place of business is located in Huron, S. Dak.

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 Ethel Eilers and William Eilers, individually and as copartners, trading as Eilers' Furs, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the

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Fur Products Name Guide and as prescribed under the Rules and Regulations;

(2) That the fur product contains or is composed of used fur, when such is the fact;

(3) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(4) That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur, when such is the fact;

(5) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce;

(6) The name of the country of origin of any imported furs contained in a fur product;

(7) The item number or mark assigned to a fur product.

B. Setting forth on labels affixed to fur products:

(1) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

(2) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, mingled with nonrequired information;

(3) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting.

C. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(2) That the fur product contains or is composed of used fur, when such is the fact;

