

Syllabus

IN THE MATTER OF

ADVANCE REALTY CORPORATION (FORMERLY CALIFORNIA SEAFOOD COMPANY, INC.), ITS OFFICERS AND DIRECTORS, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5469. Complaint, Oct. 17, 1946—Decision, Aug. 11, 1948

In a proceeding in which certain individuals who had conducted their business for six years or more through certain corporate instrumentalities, and also through certain intervening corporate and partnership instrumentalities which had been discontinued, and in which said individuals and the surviving and active corporations, which they controlled, were charged with the violation of the provision of subsec. (c) of sec. 2 of the Clayton Act, as amended, the alleged abandonment of the illegal practices complained of by one of said corporations, through which and its subsidiaries said individuals conducted a very large and extensive business, did not constitute a valid argument for dispensing with further corrective action as not required by the public interest, since, even if true, such abandonment by said corporation of the illegal practices complained of, did not, in the circumstances recited, affect the Commission's duty to proceed in the manner prescribed by the statute.

Where certain corporations and individuals who controlled them, namely—

(a) Two corporations, engaged currently or formerly in the packing of seafood for interstate sale and distribution to and through brokers, intermediaries and otherwise; and

(b) A third corporation which (1) was engaged, directly or through controlled subsidiaries, in processing, canning, manufacturing, bottling, packing, freezing and selling an extensive line of food products, including fruits, vegetables, berries, frozen foods and specialties, (2) sold said products principally under its brand name, though to some extent under private and buyer's labels and brands, (3) employed about 10,000 persons during the peak season, along with about 1,000 permanent employees, (4) advertised extensively through trade journals, outdoor posters, magazines, newspapers and over the radio, (5) sold and distributed its merchandise through its salesmen who operated principally in the west and southwest, to buyers located throughout the whole country, (6) had net annual sales in excess of \$19,000,000, not including those of a subsidiary, amounting to nearly \$11,000,000, and (7) sold and distributed to buyers throughout the United States the aforesaid seafood; and

(c) Certain individuals and partners, who, as aforesaid, controlled said corporations, and, during the period concerned herein, carried on the business involved through the instrumentality thereof, and through the means also of certain other intervening and subsequently discontinued corporate and partnership operations;

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Beginning in 1940 and during some six years, paid and granted commissions, brokerage or other compensation, allowances or discounts in lieu thereof, in connection with the sale of said products, to the other parties to such transactions and to agents, representatives and other intermediaries therein acting in fact for or in behalf of or subject to the direct or indirect control of parties to such transactions other than themselves, the payers and granters of such commissions, etc.:

Held, That such paying and granting by them of brokerage fees, commissions, or allowances in lieu thereof, to such other parties to sales transactions in commerce, and to their agents, representatives, and other intermediaries therein who acted for or in behalf of or subject to the direct or indirect control of parties thereto other than themselves, constituted violations of subsec. (c) of sec. 2 of the Clayton Act, as amended.

In said proceeding in which said third corporation or H—while admitting that it formerly made sales of merchandise in connection with which it paid commissions or brokerage to the other parties to the transactions, or to agents or intermediaries therein acting subject to the control of the latter—said, by way of mitigation, that in February 1943 it was completely reorganized with resulting changes in business policies and practices, including the practice of packing its merchandise under labels other than its own, and that thereafter the practice of making payments of commission or brokerage to purchasers or their agents was discontinued: it appeared that up to July 1946 the practice had not been completely abandoned in connection with the sale of seafood products, and that up to October 1946 it had not been abandoned in connection with the sale of other merchandise, and that during the intervening period of over three years it had paid brokerage in a number of transactions in which it sold seafood to so-called organizational buyers, which represented the purchasers; and also that, during said period, there were a number of other transactions in which it invoiced to brokers in the brokers' own names, through drafts for the purchase price of merchandise sold, less brokerage commissions, and in which transactions the merchandise was thereafter stored in the brokers' own warehouses and later sold by such brokers as their own merchandise to purchasers whose only dealings were with the brokers.

As respects the contention of H, with respect to the aforesaid facts, which it conceded to be true, that during said period the transactions in which brokerage was paid to purchasers or their agents amounted to less than one percent of its total volume of business, and that in the circumstances the public interest did not require further corrective action, such an argument was not convincing, in that one percent of the conceded net sales of H, of more than \$19,000,000, not including nearly \$11,000,000 of its subsidiary, involved a very substantial number of transactions and a very substantial amount of total volume business. It appeared, furthermore, in said connection, that during all of the time periods involved the controlling stockholders of H were the same individuals who, during the same time periods, operated as partners, officers, directors, and controlling stockholders through the various instrumentalities herein employed by them in the continuation of their business, so that, even had H abandoned the erroneous practices

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complained of, said fact would not affect the Commission's duty to proceed in the manner prescribed by the statute.

Before *Mr. Frank Hier*, trial examiner.

Mr. Eldon P. Schrup for the Commission.

Tapper & Tapper and *O'Melveny & Myers*, of Los Angeles, Calif., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described since June 19, 1936, have violated and are 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 Advance Realty Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with principal office and place of business located at 1275 West Seventh Street, Long Beach, Calif. Respondent Advance Realty Corp. was incorporated May 13, 1940, by M. A. Rex, Edmund Davies, and George J. Tapper, under the name California Sea Food Co., Inc., and through name change effected by certificate of amendment filed November 2, 1944, with the office of the secretary of state, State of California, became Advance Realty Corp.

The respondent officers and directors of respondent Advance Realty Corp. are the following respondents:

Myer Simon -----	President and Director.
Evelyn Simon Brooks -----	Secretary, Treasurer, and Director.
Fred Meyer -----	Director.

The preferred stock of respondent Advance Realty Corp. is owned and controlled by the following respondents:

Myer Simon.
 Lucille Evelyn Simon.
 Lucille Ellis Simon.
 Norton Simon.

The common stock of respondent Advance Realty Corp. is held and controlled by the following respondents:

Norton Simon -----	As guardian of the estate of Robert Ellis Simon, minor.
Harold C. Brooks -----	As guardian of the estate of Donald Ellis Simon, minor.

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Harold C. Brooks and

Evelyn Simon Brooks----- As guardians of the estate of Linda Joyce Brooks, minor.

Frederick R. Weisman and

Marcia Simon Weisman----- As guardians of the estate of Richard Lee Weisman, minor.

Respondent Advance Realty Corp., under the name California Sea Food Co., Inc., during May 1940, purchased the creditors' claims of California Fisheries, Inc., and in exchange for the same acquired the real estate, plant, and equipment of said insolvent corporation located at 1275 West Seventh Street, Long Beach, Calif., and engaged in the business of the packing for sale of sea food. Following said acquisition said respondent under sales agreement with Val Vita Food Products, Inc., a California corporation now dissolved and then located at 1747 West Commonwealth Street, Fullerton, Calif., until November 30, 1941, packed sea food for sale and distribution by Val Vita Food Products, Inc., to and through broker intermediaries and otherwise to buyers located throughout the United States in States other than and including the State of California. Respondent Advance Realty Corp., the then California Sea Food Co., Inc., on December 1, 1941, discontinued the foregoing business activities and disposed of the aforescribed plant and equipment, with the exception of the real estate, by sale to the now dissolved California Sea Food Co.

PAR. 2. California Sea Food Co. was a partnership duly registered in the office of the county clerk, Los Angeles County, city of Los Angeles, State of California, and doing business under the fictitious firm name laws of said State with principal office and place of business located at 1275 West Seventh Street, Long Beach, Calif. A certificate of business under the fictitious firm name of California Sea Food Co. was first filed in the office of the county clerk, Los Angeles County, city of Los Angeles, State of California, on October 18, 1923, which said certificate gave the nature of the business as a general fish brokerage business located at 344 Pacific Electric Building, Los Angeles, Calif., under the ownership of M. A. Rex, 1417 South Oxford Street, Los Angeles, Calif. On December 1, 1941, another certificate of business under said fictitious firm name of California Sea Food Co. was filed in said office, stating the nature of the business to be a sea food and sea food byproducts business and the members of the firm to consist of the following respondents:

Norton Simon----- 1739 Buckingham Rd., Los Angeles, Calif.
 Norton Simon----- As guardian of the estate of Robert Ellis Simon, minor, 1739 Buckingham Rd., Los Angeles, Calif.

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Norton Simon-----	As guardian of the estate of Donald Ellis Simon, minor, 1739 Buckingham Rd., Los Angeles, Calif.
Myer Simon-----	414 South Lorraine Blvd., Los Angeles, Calif.
Harold Brooks and Evelyn Simon Brooks.	As guardians of the estate of Linda Joyce Brooks, minor, 929 Westchester Pl., Los Angeles, Calif.
Frederick R. Weisman and Marcia Simon Weisman.	As guardians of the estate of Richard Lee Weisman, minor, 1205 Luanne St., Fullerton, Calif.

Following the acquisition from respondent Advance Realty Corp., the then California Sea Food Co., Inc., of the hereinbefore-described plant and equipment excepting real estate, California Sea Food Co. under sales agreement with Val Vita Food Products, Inc., from December 1, 1941 until November 30, 1942, packed sea food for sale and distribution by Val Vita Food Products, Inc., to and through broker intermediaries and otherwise to buyers located throughout the United States in States other than and including the State of California. Upon the dissolution of Val Vita Food Products, Inc., and the temporary occupancy of said dissolved corporation's premises by respondent Val Vita Food Products, a partnership, California Sea Food Co., under sales agreement with respondent Val Vita Food Products from December 1, 1942, until February 28, 1943, packed sea food for sale and distribution by respondent Val Vita Food Products to and through broker intermediaries and otherwise to buyers as afore-described. Following acquisition of the control of respondent Hunt Foods, Inc., the then Hunt Bros. Packing Co. by respondent Val Vita Food Products, the installation of a new management, and the purchase and acquisition of the real estate, plant, equipment, and other assets of the dissolved Val Vita Food Products, Inc., located at 1747 West Commonwealth Street, Fullerton, Calif., by respondent Hunt Foods, Inc., the then Hunt Bros. Packing Co., California Sea Food Co., from February 28, 1943, until January 31, 1945, packed sea food for sale and distribution by respondent Hunt Foods, Inc., the then Hunt Bros. Packing Co. to and through broker intermediaries and otherwise to buyers located throughout the United States in States other than and including the State of California.

California Sea Food Co. upon the disposition of the plant and equipment, excepting real estate, located at 1275 West Seventh Street, Long Beach, Calif., by sale to respondent California Sea Food Corp. and the activation of said respondent California Sea Food Corp. on February 1, 1945, discontinued the foregoing business activities. Cali-

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ifornia Sea Food Co. on July 1, 1946, filed a certificate of dissolution of copartnership in the office of the county clerk, Los Angeles County, city of Los Angeles, State of California, to the certificate of business for doing business under the fictitious firm name of California Sea Food Co. filed in said office on December 1, 1941.

PAR. 3. Respondent California Sea Food Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 1275 West Seventh Street, Long Beach, Calif. Said respondent corporation was incorporated November 4, 1944, by Norton Simon, Myer Simon, and George J. Tapper.

The respondent officers and directors of respondent California Sea Food Corp. are the following respondents:

Myer Simon.....	President and director.
Fred Stern Meyer.....	Vice president.
Gilbert R. Karste.....	Secretary and treasurer.
George J. Tapper.....	Director.
William L. Kumler.....	Do.

The common stock and the first trust sinking fund 10-year bonds of respondent California Sea Food Corp. are held and controlled by the following respondents, the former members of the hereinbefore described now dissolved California Sea Food Co.:

Norton Simon.....	1739 Buckingham Rd., Los Angeles, Calif.
Norton Simon.....	As guardian of the estate of Robert Ellis Simon, minor, 1739 Buckingham Rd., Los Angeles, Calif.
Norton Simon.....	As guardian of the estate of Donald Ellis Simon, minor, 1739 Buckingham Rd., Los Angeles, Calif.
Myer Simon.....	414 South Lorraine Blvd., Los Angeles, Calif.
Harold Brooks and Evelyn Simon Brooks.	As guardians of the estate of Linda Joyce Brooks, minor, 929 Westchester Pl., Los Angeles, Calif.
Frederick R. Weisman and Marcia Simon Weisman.	As guardian of the estate of Richard Lee Weisman, minor, 1205 Luanne St., Fullerton, Calif.

Respondent California Sea Food Corp. following the acquisition from California Sea Food Co. of the plant and equipment excepting real estate hereinbefore described, remained inactive until February 1, 1945, from which date until May 29, 1945, said respondent packed sea food for sale and distribution by respondent Hunt Foods, Inc., the then Hunt Bros. Packing Co. to and through broker intermedi-

aries and otherwise to buyers located throughout the United States in States other than and including the State of California. Following the filing May 29, 1945, with the office of the secretary of state, State of Delaware, of certificate of amendment changing the name of Hunt Bros. Packing Co. to Hunt Foods, Inc., respondent California Sea Food Corp. has been engaged in the packing of seafood for sale and distribution by respondent Hunt Foods, Inc. as aforescribed.

PAR. 4. Respondent Val Vita Food Products is a partnership duly registered in the office of the county clerk, Orange County, city of Santa Ana, State of California, and doing business under the fictitious firm name laws of said state with principal office and place of business now located at 3055 Wilshire Boulevard, Los Angeles, Calif.

A certificate of business under the fictitious firm name of Val Vita Food Products was filed December 1, 1942, in the office of the county clerk, Orange County, city of Santa Ana, State of California, which said certificate stated the nature of the business to be the manufacture and sale of tin cans and the jobbing of canned goods, cannery supplies, and raw materials, with principal office and place of business located at 1747 West Commonwealth Street, Fullerton, Calif., and the members of the firm to consist of the following respondents:

Norton Simon-----	1739 Buckingham Rd., Los Angeles, Calif.
Norton Simon-----	As guardian of the estate of Robert Ellis Simon, minor, 1739 Buckingham Rd., Los Angeles, Calif.
Norton Simon-----	As guardian of the estate of Donald Ellis Simon, minor, 1739 Buckingham Rd., Los Angeles, Calif.
Lucille Ellis Simon-----	1739 Buckingham Rd., Los Angeles, Calif.
Myer Simon-----	414 South Lorraine Blvd., Los Angeles, Calif.
Lucille Evelyn Simon-----	414 South Lorraine Blvd., Los Angeles, Calif.
Marcia Simon Weisman-----	1205 Luanne Ave., Fullerton, Calif.
Evelyn Simon Brooks-----	1200 Luanne Ave., Fullerton, Calif.

Upon the dissolution of Val Vita Food Products, Inc., and the occupancy by respondent Val Vita Food Products of said dissolved corporation's premises for liquidating purposes, respondent Val Vita Food Products under sales agreement with the now dissolved California Sea Food Co. from December 1, 1942, until February 28, 1943, sold and distributed California Sea Food Co. packed sea food to and through broker intermediaries and otherwise to buyers located throughout the United States in States other than and including the

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State of California. Following the purchase and acquisition by respondent Hunt Foods, Inc., the then Hunt Bros. Packing Co. of the hereinbefore described properties of the dissolved Val Vita Food Products, Inc., respondent Val Vita Food Products discontinued the foregoing business activities.

PAR. 5. Val Vita Food Products, Inc., was a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with principal office and place of business located at 1747 West Commonwealth Street, Fullerton, Calif. Val Vita Food Products, Inc., was incorporated April 8, 1935, under the name National Can Co., with principal office and place of business located at 1003 Santa Fe Avenue, city of Los Angeles, Los Angeles County, State of California. By certificate of amendment filed June 19, 1935, with the office of the secretary of state, State of California, said corporation's name was changed to United Can Co., and by certificate of amendment similarly filed January 3, 1939, said corporation's name was again changed to Val Vita Food Products, Inc., which said corporation became the successor to Val Vita Food Products, Inc., another corporation of the same name dissolved as of the same date and located at 1747 West Commonwealth Street, Fullerton, Calif. The Val Vita Food Products, Inc., dissolved as of January 3, 1939, was incorporated September 16, 1931, under the name California Gold Brand Foods, Inc., with principal office and place of business located at 1747 West Commonwealth Street, city of Fullerton, Orange County, State of California. By certificate of amendment filed June 17, 1932, with the office of the secretary of state, State of California, said corporation's name was changed to Orange County Cannery, Inc., and by certificate of amendment similarly filed January 21, 1936, said corporation's name was again changed to Val Vita Food Products, Inc. The Val Vita Food Products, Inc., first located at 1747 West Commonwealth Street, Fullerton, Calif., was dissolved by certificate of dissolution filed January 3, 1939, with the office of the secretary of state, State of California, and signed by Norton Simon, Lucille Ellis Simon, and Lucille Evelyn Simon, as directors of said dissolved corporation.

Val Vita Food Products, Inc., the successor to the Val Vita Food Products, Inc., dissolved on January 3, 1939, was in turn dissolved by certificate of dissolution filed November 30, 1942, with the office of the secretary of state, State of California, signed by Norton Simon, Lucille Ellis Simon, Frederick R. Weisman, and Harold C. Brooks as directors of said dissolved corporation. The corporate officials of

Val Vita Food Products, Inc., dissolved November 30, 1942 were the following respondents:

Norton Simon

Norton Simon-----	President.
Marcia Simon Weisman-----	Vice president.
Evelyn Simon Brooks-----	Treasurer.
Frederick R. Weisman-----	Secretary.

The corporate stock of Val Vita Food Products, Inc., dissolved November 30, 1942, was owned or controlled by the following respondents:

Norton Simon.

Norton Simon----- As guardian of the estate of Robert Ellis Simon, minor.

Norton Simon----- As guardian of the estate of Donald Ellis Simon, minor.

Lucille Ellis Simon, Myer Simon,
Lucille Evelyn Simon, Marcia Simon
Weisman, Evelyn Simon Brooks.

Prior to dissolution, Val Vita Food Products, Inc., from May 1940 until November 30, 1942, sold and distributed seafood packed by respondent Advance Realty Corp. the then California Sea Food Co., Inc., and California Sea Food Co. to and through broker intermediaries and otherwise to buyers located throughout the United States in States other than and including the State of California.

PAR. 6. Respondent Advance Realty Corp. the then California Sea Food Co., Inc., the now dissolved California Sea Food Co., the now dissolved Val Vita Food Products, Inc., and respondent Val Vita Food Products, while commonly owned, controlled, and managed by the hereinbefore named individual respondents concerned during the times and in the sales transactions set out and described herein and in paragraphs preceding, operated under the following sales agreement:

Respondent Advance Realty Corp., the then California Sea Food Co., Inc., and the now dissolved California Sea Food Co. (the packers) agreed to supply the now dissolved Val Vita Food Products, Inc., and respondent Val Vita Food Products (the sellers) all the canned sea food ordered by the sellers from the packers at the market price less 10 percent which said 10 percent was intended by the parties to cover the sellers' expenses such as and including warehousing, freight, insurance, selling, billing, administrative, and other costs. Pursuant thereto the sellers upon the receipt of merchandise purchase orders from buyers, transmitted orders to the packers following which the merchandise was segregated in the packers' warehouse pending sellers'

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shipping instructions, or delivery was effected by or to the sellers for shipment by the sellers. The merchandise involved was sold by the sellers at the market price and from time to time, which times were agreed upon by the parties to the agreement, the average market price less 10 percent was paid by the sellers to the packers. During the time periods concerned, the sellers would pay the packers an arbitrary price, usually less than the market price, and when the market price received by the sellers was determined, debit and credit memorandums would issue between the parties in adjustment of the amounts due each pursuant to the agreement. Similar sales transactions by the now dissolved California Sea Food Co. and respondent California Sea Food Corp. (the packers), and respondent Hunt Foods, Inc., formerly Hunt Bros. Packing Co. (the seller), were not consummated under the terms of said agreement in that said parties in such transactions while commonly owned, controlled, or managed by the hereinbefore and hereinafter named individual respondents concerned during the time periods involved, operated on a predetermined commission, brokerage, compensation, allowance, or discount paid and granted by the said now dissolved California Sea Food Co. and respondent California Sea Food Corp. and received and accepted by said respondent Hunt Foods, Inc., formerly Hunt Bros. Packing Co.

Under the foregoing sales agreement respondent Advance Realty Corp. the then California Sea Food Co., Inc., the now dissolved California Sea Food Co., the dissolved Val Vita Food Products, Inc., and respondent Val Vita Food Products from May 1940 until February 28, 1943, sold and shipped or caused to be shipped from the State or States wherein located in response to the merchandise purchase orders of the aforescribed located buyers thereof, approximately 323,107 cases of canned sea food. Following the acquisition by respondent Hunt Foods, Inc., the then Hunt Bros. Packing Co. of the operating premises of the dissolved Val Vita Food Products, Inc., the said now dissolved California Sea Food Co., respondent California Sea Food Corp. and respondent Hunt Foods, Inc., formerly Hunt Bros. Packing Co. from March 1, 1943 until June 30, 1945, sold and shipped or caused to be shipped from the State or States wherein located in response to the merchandise purchase orders of the aforescribed located buyers thereof, approximately 320,840 cases of canned sea food valued at \$2,552,338.01.

PAR. 7. Respondent Hunt Foods, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with principal offices located at 1 Drumm Street, San Francisco, Calif., executive offices at 3055 Wilshire Boulevard,

Los Angeles, Calif., and plants variously located throughout the States of California, Oregon, and Washington as follows:

Fullerton, Calif.	San Jose, Calif.
Hayward, Calif.	Modesto, Calif.
Oakdale, Calif.	Fresno, Calif.
Mountain View, Calif.	South San Francisco, Calif.
Graton, Calif.	Scapoose, Oreg.
Ryde, Calif.	Salem, Oreg.
Campbell, Calif.	Puyallup, Wash.

Respondent Hunt Foods, Inc., owns and controls approximately 70 percent of the outstanding capital stock of Rocky Mountain Packing Corp., a Utah corporation with principal office located at 48 South West Temple, Salt Lake City, Utah, and plants at Murray, Manti, Tremonton, Ephraim, and Ogden, Utah. Three other wholly owned subsidiaries largely preserved for trade value and brand name purposes are the following:

The Winters Canning Co., a California corporation, San Francisco, Calif.

Golden Gate Packing Co., a California corporation, San Francisco, Calif.

Pacific Northwest Canning Co., a Washington corporation, Puyallup, Wash.

The respondent officers and directors of respondent Hunt Foods, Inc., are the following respondents:

Norton Simon	Chairman and director.
M. E. Wangenheim	President and director.
Frederick R. Weisman	Executive vice president and director.
W. St. B. Eustis	Vice president and director.
Irving Goldfeder	Vice president.
Ingvard Martin	Treasurer.
N. W. Stern	Secretary.
Edward Mittleman	Do.
G. L. Bonsteel	Assistant secretary.
R. S. Cook	Do.
A. J. Winston	Do.
G. W. Wallace	Do.
H. L. Lantin	Director.
H. C. Brooks	Do.
Theodore Weisman	Do.
David May	Do.

Respondent Hunt Foods, Inc., incorporated in the State of Delaware April 29, 1945, under the name Hunt Bros. Packing Co., was the successor to Hunt Bros. Packing Co., incorporated in the State of

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California, March 8, 1919, which said corporation in turn succeeded Hunt Bros. Co. incorporated 1896 in the State of California. Following the acquisition of the control of respondent Hunt Foods, Inc., the then Hunt Bros. Packing Co. by respondent Val Vita Food Products, a partnership, and the installation of new corporate management, respondent Hunt Foods, Inc., the then Hunt Bros. Packing Co. purchased and acquired in February 1943, the real estate, plant, equipment, and other assets of the dissolved Val Vita Food Products, Inc., located at Fullerton, Calif. By certificate of amendment filed May 29, 1945, with the office of the secretary of state, State of Delaware, the corporate name Hunt Bros. Packing Co. was changed to Hunt Foods, Inc. Respondent Hunt Foods, Inc., during May 1945, acquired control of Fontana Food Products Co., a California corporation located in South San Francisco, Calif. By certificate of agreement of merger filed November 30, 1945, in the office of the secretary of state, State of Delaware, respondent Hunt Foods, Inc., and California Conserving Co., Inc., a Nevada corporation with principal office located at 1 Drumm Street, San Francisco, Calif. and plants variously located in California and Oregon, were merged into respondent Hunt Foods, Inc., and the present corporate management was installed. In said merger with California Conserving Co., Inc., respondent Hunt Foods, Inc. also acquired complete stock ownership of said California Conserving Co., Inc.'s subsidiaries Pacific Conserving Co. and Knight Packing Co., located in California and Oregon, respectively. During June 1946, respondent Hunt Foods, Inc., purchased the properties and brand names of Guggenlime & Co., a Delaware corporation located at San Francisco, Calif., and Drew Canning Co., Campbell, Calif.

Respondent Hunt Foods, Inc., the then Hunt Bros. Packing Co., from March 1, 1943, until January 31, 1945, pending liquidation by the now dissolved California Sea Food Co. of merchandise on hand and following the activation of respondent California Sea Food Corp. from February 1, 1945, until May 29, 1945, as Hunt Bros. Packing Co., and from May 29, 1945, and since as Hunt Foods, Inc., has sold and distributed sea food packed by the said now dissolved California Sea Food Co. and by respondent California Sea Food Corp. as aforescribed to and through broker intermediaries and otherwise to buyers located throughout the United States in States other than and including the State of California.

Respondent Hunt Foods, Inc., formerly Hunt Bros. Packing Co. both prior and subsequent to the acquisition of said respondent corporation's management and control by respondent Val Vita Food Products

and said partnership's respondent members has principally been engaged directly or through controlled subsidiaries in the business of processing, canning, manufacturing, bottling, packing, freezing, and selling of an extensive line of food products including the following:

(1) Specialties: Catsup, macaroni, mustards, noodles, pickled onions, peppers, pickles, pork and beans, relish, tomato paste and relish, various sauces, spaghetti, and vinegars;

(2) Fruits: Apricots, fruit cocktail and mix, peaches, pears, plums, and prunes;

(3) Vegetables: Tomatoes, tomato juice and puree, asparagus, string beans, beets, carrots, corn, peas, new potatoes, and spinach;

(4) Berries, cherries, jellies, and preserves;

(5) Frozen foods: Lima beans and peas.

Merchandise is sold principally under the respondent seller's brand names of "Hunt," "CHB," "Val Vita," "Fontana," "Twin Peaks," and "Guggenlime"; said respondent has, however, sold and distributed said merchandise to buyers under so-called private or buyers' labels or brands owned or controlled by the buyers or other parties involved in the transaction other than said respondent seller. Respondent corporation employs approximately 10,000 persons during the peak season and maintains a force of about 1,000 permanent employees. Respondent Hunt Foods, Inc., extensively engages in advertising through trade journals, outdoor posters, magazines, newspapers, and the radio, and sells and distributes its merchandise through the company's sales organization of salaried salesmen operating principally in the State of California, Oregon, Arizona, Washington, New Mexico, Utah, Colorado, Texas, and Louisiana, and throughout the United States by sale and distribution to and through broker intermediaries and otherwise to buyers located in States other than and including the State of respondent's location. Respondent Hunt Foods, Inc., in such sales transactions in response to merchandise purchase orders received from buyers so located sells and ships or causes to be shipped the merchandise involved from the State or States wherein located to the buyers thereof in the State or States of said buyer's location. Respondent Hunt Foods, Inc., net sales for the fiscal year ending February 28, 1945, were \$19,264,000.00, not including the net sales of the hereinbefore described merged California Conserving Co., Inc., for 1945 of \$10,802,589.00.

PAR. 8. Respondents Advance Realty Corp., formerly California Sea Food Co., Inc., a corporation, and its officers and directors; California Sea Food Corp., a corporation, and its officers and directors;

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Hunt Foods, Inc., formerly Hunt Bros. Packing Co., a corporation, and its officers and directors; and Norton Simon, Lucille Ellis Simon, Myer Simon, Lucille Evelyn Simon, Frederick R. Weisman, Marcia Simon Weisman, Harold C. Brooks, Evelyn Simon Brooks, Norton Simon, as guardian of the estate of Robert Ellis Simon, minor, Norton Simon, as guardian of the estate of Donald Ellis Simon, minor, Harold C. Brooks, as guardian of the estate of Donald Ellis Simon, minor, Frederick R. Weisman and Marcia Simon Weisman, as guardians of the estate of Richard Lee Weisman, minor, Harold C. Brooks and Evelyn Simon Brooks, as guardians of the estate of Linda Joyce Brooks, minor, individually and as their interests appeared, as partners trading and doing business under the fictitious firm name Val Vita Food Products, as former officers, directors, and controlling stockholders of Val Vita Food Products, Inc., a corporation now dissolved, as partners formerly trading and doing business under the fictitious firm name California Sea Food Co., and as controlling stockholders of Advance Realty Corp., formerly California Sea Food Co., Inc., California Sea Food Corp., and Hunt Foods, Inc., formerly Hunt Bros. Packing Co., in the transactions during the time periods in the manner and under the circumstances hereinbefore set forth, paid and granted commissions, brokerage, or other compensation, allowances, or discounts in lieu thereof, to the other parties to such transactions and to agents, representatives, and other intermediaries therein acting in fact for or in behalf or subject to the direct or indirect control of parties other than the said respondents.

PAR. 9. The payment and granting by the respondents concerned, and hereinbefore named and set out, of the commissions, brokerage, or other compensation, allowances, or discounts in lieu thereof in the transactions during the time periods in the manner and under the circumstances hereinbefore set forth, to the other parties to such transactions and to agents, representatives and other intermediaries therein acting in fact for or in behalf or subject to the direct or indirect control of parties other than the said respondents, were made in the course of commerce as that term is defined in the Clayton Act, as amended, and are violative of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. title 16, sec. 13), approved June 19, 1936.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monop-

lies, and for other purposes," approved October 15, 1914, (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (15 U. S. C. sec. 13), the Federal Trade Commission on October 17, 1946, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging said respondents with violation of the provisions of subsection (c) of section 2 of said Clayton Act, as amended. The respondents filed their answers to the complaint on December 9, 1946, and on January 16, 1947, a trial examiner of the Commission was duly designated and appointed to take testimony and receive evidence in the proceeding. During a hearing held March 3 to March 6, 1947, the respondents, by their attorneys, filed with the trial examiner motions to withdraw their answers dated December 9, 1946, and to substitute in lieu thereof answers dated March 6, 1947, which were attached thereto, and on September 12, 1947, these motions were granted by the Commission. In the substitute answers all of the respondents except Hunt Foods, Inc., and its officers and directors, admitted all of the allegations of the complaint, and respondents Hunt Foods, Inc., and its officers and directors admitted all of said allegations except those contained in paragraphs 7, 8, and 9. Respondents Hunt Foods, Inc., and its officers and directors in addition attached to their substitute answers a stipulation of facts, which was executed by counsel for these respondents and counsel supporting the complaint, covering all of the facts not admitted. In said substitute answers all of the respondents waived all intervening procedure, including the taking of testimony, and expressly agreed that the Commission may proceed upon the complaint, the substitute answers, briefs, and oral argument of counsel, to make its findings as to the facts, including inferences and conclusions based thereon, and enter its order disposing of the proceeding. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' substitute answers, the aforesaid stipulation of facts, briefs, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Advance Realty Corp. 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 1275 West Seventh Street, Long Beach, Calif.

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This respondent was incorporated May 13, 1940, under the name California Sea Food Co., Inc., and through a change in its name effected November 2, 1944, became Advance Realty Corp. The officers and directors of said corporation are the following individuals:

Myer Simon.....	President and director.
Evelyn Simon Brooks.....	Secretary, treasurer and director.
Fred Meyer.....	Director.

The preferred stock of the corporation is owned and controlled by the following individuals: Myer Simon, Lucille Evelyn Simon, Lucille Ellis Simon, and Norton Simon;

and the common stock of said corporation is held and controlled by the following parties:

Norton Simon.....	As guardian of the estate of Robert Ellis Simon, a minor.
Harold C. Brooks.....	As guardian of the estate of Donald Ellis Simon, a minor.
Harold C. Brooks and Evelyn Simon Brooks.	As guardians of the estate of Linda Joyce Brooks, a minor.
Frederick R. Weisman and Marcia Simon Weisman.	As guardians of the estate of Richard Lee Weisman, a minor.

From the date of its incorporation until November 30, 1941, respondent Advance Realty Corp., then operating under the name California Sea Food Co., Inc., was engaged in the business of packing sea food. During this period of time, said respondent, acting under a sales agreement with Val Vita Food Products, Inc., a California corporation now dissolved but then located at Fullerton, Calif., packed sea food for sale by the said Val Vita Food Products, Inc., to and through broker intermediaries, and otherwise, to buyers located throughout the United States.

On December 1, 1941, respondent Advance Realty Corp., the then California Sea Food Co., Inc., discontinued the aforesaid business activity and disposed of its packing plant and equipment by sale to the California Sea Food Co., a partnership duly registered in the office of the county clerk, Los Angeles County, city of Los Angeles, State of California, and doing business under the fictitious firm name laws of said State. The office and principal place of business of this company was located at 1275 West Seventh Street, Long Beach, Calif., this being the same location as the place of business of respondent Advance Realty Corp., and the partnership was composed of the following persons: Norton Simon, acting individually and as guardian of the estates of Robert Ellis Simon and Donald Ellis Simon, minors; Meyer Simon; Harold Brooks, and Evelyn Simon Brooks, as guardians of the estate

of Linda Joyce Brooks, a minor; and Frederick R. and Marcia Simon Weisman, as guardians of the estate of Richard Lee Weisman.

From December 1, 1941, until November 30, 1942, this company, acting under a sales agreement with Val Vita Food Products, Inc., a California corporation of Los Angeles, Calif., packed sea food for sale and distribution by the said Val Vita Food Products, Inc., to and through broker intermediaries, and otherwise, to buyers located throughout the United States. From December 1, 1942, until February 28, 1943, said company packed sea food for sale and distribution by respondent Val Vita Food Products, a partnership hereinafter more fully described, to and through broker intermediaries, and otherwise, to buyers located throughout the United States; and from February 28, 1943, until January 31, 1945, said company packed sea food for sale and distribution by respondent Hunt Foods, Inc., then Hunt Bros. Packing Co., to and through broker intermediaries, and otherwise, to buyers located throughout the United States.

On or about February 1, 1945, the said California Sea Food Co. disposed of its packing plant and equipment by sale to respondent California Sea Food Corp., and on or about July 1, 1946, the company was dissolved.

PAR. 2. Respondent California Sea Food Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California. This respondent was incorporated November 4, 1944, and it maintains its office and principal place of business at 1275 West Seventh Street, Long Beach, Calif., this being the same location as the place of business of respondent Advance Realty Corporation. The officers and directors of said corporation are:

Myer Simon	President and director.
Fred Stern Meyer	Vice president.
Gilbert R. Karste	Secretary and treasurer.
George J. Tapper	Director.
William L. Kumler	Do.

and the corporation's common stock and first trust sinking fund 10-year bonds are held and controlled by the following individuals, being the former members of the now dissolved California Sea Food Company:

Norton Simon	Individually and as guardian of the estates of Robert Ellis Simon and Donald Ellis Simon, minors.
Harold Brooks and Evelyn Simon Brooks.	As guardians of the estate of Linda Joyce Brooks, a minor.
Frederick R. Weisman and Marcia Simon Weisman.	As guardians of the estate of Richard Lee Weisman, a minor, and
Myer Simon.	

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This respondent, having acquired the sea-food packing plant and equipment of California Sea Food Co., from February 1, 1945, until May 29, 1945, was engaged in packing sea food for sale and distribution by respondent Hunt Bros. Packing Co. to buyers located throughout the United States. Since May 29, 1945, said respondent has packed sea food for sale and distribution as aforesaid by respondent Hunt Foods, Inc.

PAR. 3. Respondent Val Vita Food Products is a partnership duly registered in the office of the county clerk, Orange County, city of Santa Ana, State of California, and doing business under the fictitious firm name laws of said State, with its office and principal place of business now located at 3055 Wilshire Boulevard, Los Angeles, Calif. This firm's certificate of business was filed on December 1, 1942, and the members of the partnership are the following individuals:

Norton Simon, individually and as guardian of the estates of Robert Ellis Simon and Donald Ellis Simon, minors.

Lucille Ellis Simon.

Myer Simon.

Lucille Evelyn Simon.

Marcia Simon Weisman, and

Evelyn Simon Brooks.

Respondent Val Vita Food Products, from December 1, 1942, until February 28, 1943, was engaged in liquidating the affairs of Val Vita Food Products, Inc., a California corporation, with its office and principal place of business located in Fullerton, Calif., which corporation was dissolved November 30, 1942, and which corporation itself was the successor to another corporation of the same name which had been dissolved January 3, 1939. Val Vita Food Products, Inc., the corporation dissolved November 30, 1942, from May 1940 until the date of its dissolution, was engaged in the sale and distribution to and through brokers, and otherwise, throughout the United States of sea food packed by respondent Advance Realty Corp., then California Sea Food Co., Inc., and respondent Val Vita Food Products, the partnership, while liquidating the affairs of said corporation, sold and distributed to and through brokers, and otherwise, throughout the United States sea food packed by the partnership California Sea Food Co.

The corporate officials of Val Vita Food Products, Inc., the corporation dissolved November 30, 1942, were the following individuals:

Norton Simon-----	President.
Marcia Simon Weisman-----	Vice President.
Evelyn Simon Brooks-----	Treasurer, and
Frederick R. Weisman-----	Secretary.

and the corporate stock of this corporation was owned or controlled by the following persons:

Norton Simon, individually and as guardian of the estates of Robert Ellis Simon and Donald Ellis Simon, minors.

Lucille Ellis Simon.

Myer Simon.

Lucille Evelyn Simon.

Marcia Simon Weisman, and

Evelyn Simon Brooks.

PAR. 4. Respondent Hunt Foods, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with principal offices located at No. 1 Drumm Street, San Francisco, Calif., executive offices at 3055 Wilshire Boulevard, Los Angeles, Calif., and plants located throughout the States of California, Oregon, and Washington. The officers and directors of said respondent are the following individuals:

Norton Simon.....	Chairman and director.
M. E. Wangenheim.....	President and director.
Frederick R. Weisman.....	Executive vice president and director.
W. St. B. Eustis.....	Vice president and director.
Irving Goldfeder.....	Vice president.
Ingvard Martin.....	Treasurer.
N. W. Stern.....	Secretary.
Edward Mittelman.....	Do.
G. L. Bonsteel.....	Assistant secretary.
R. S. Cook.....	Do.
A. J. Winston.....	Do.
G. W. Wallace.....	Do.
H. L. Lantin.....	Director.
H. C. Brooks.....	Do.
Theodore Weisman.....	Do.
David May.....	Do.

Respondent Hunt Foods, Inc., was incorporated April 25, 1945, under the name Hunt Bros. Packing Co., and was the successor to Hunt Bros. Packing Co., a corporation incorporated in the State of California March 8, 1919, which corporation had in turn succeeded Hunt Bros. Co., a California corporation incorporated in 1896. In the early part of 1943, full control of this respondent was acquired by respondent Val Vita Food Products, and in February 1943 the real estate, plant, equipment, and other assets of Val Vita Food Products, Inc., the corporation dissolved November 30, 1942, were transferred to it. In May 1945 the corporate name of Hunt Bros. Packing Co. was changed to Hunt Foods, Inc., and subsequent to that date respondent

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Hunt Foods, Inc., through various purchases, mergers, and otherwise, acquired the ownership or control of Fontana Food Products, a California corporation located in San Francisco, Calif., California Conserving Co., Inc., a Nevada corporation, with principal office located at No. 1 Drumm Street, San Francisco, Calif., and plants variously located in California and Oregon, and this company's two subsidiaries, Pacific Conserving Co. and Knight Packing Co., located respectively in California and Oregon, Guggenhime & Co., a Delaware corporation, located in San Francisco, Calif., and Drew Canning Co. of Campbell, Calif. Respondent Hunt Foods, Inc., also owns and controls approximately 70 percent of the outstanding capital stock of Rocky Mountain Packing Corp., a Utah corporation, with principal office located at 48 South West Temple, Salt Lake City, Utah, and plants at Murray, Manti, Tremonton, Ephraim, and Ogden, Utah, and is the owner of the following subsidiaries, which are preserved largely for trade value and brand name purposes:

The Winters Canning Co., a California corporation, San Francisco, Calif.

Golden Gate Packing Co., a California corporation, San Francisco, Calif.

Pacific Northwest Canning Co., a Washington corporation, Puyallup, Wash.

Respondent Hunt Foods, Inc., formerly Hunt Bros. Packing Co., both prior and subsequent to the acquisition of control over it by respondent Val Vita Food Products, has been engaged directly or through controlled subsidiaries in the business of processing, canning, manufacturing, bottling, packing, freezing, and selling an extensive line of food products, including fruits, vegetables, berries, frozen foods, and specialties. These products are sold principally under this respondent's brand names of "Hunt," "CHB," "Val Vita," "Fontana," "Twin Peaks," and "Guggenhime." Said respondent, however, has sold and distributed some of its merchandise to buyers under so-called private or buyers' labels or brands, which are owned or controlled by the buyers or other parties involved in the transactions other than the seller. The corporation employs approximately 10,000 persons during the peak season and maintains a force of about 1,000 permanent employees. It engages extensively in advertising through trade journals, outdoor posters, magazines, newspapers, and over the radio, and it sells and distributes its merchandise through the company's sales organization of salaried salesmen operating principally in the western and southwestern parts of the United States, and otherwise, to buyers

located throughout the whole country. Respondent Hunt Foods, Inc., in such sales transactions, in response to merchandise purchase orders received from the buyers, sells and ships or causes to be shipped the merchandise involved from the State or States wherein located to the buyers thereof at their respective points of location. The net sales of respondent Hunt Foods, Inc., for the fiscal year ending February 28, 1945, were \$19,264,000, not including the net sales of the California Conserving Co., Inc., for 1945, of \$10,802,589.

Respondent Hunt Foods, Inc., from March 1, 1943, until May 29, 1945, as Hunt Bros. Packing Co., and since May 29, 1945, as Hunt Foods, Inc., has sold and distributed to buyers located throughout the United States sea food packed by the now dissolved California Sea Food Co. and by respondent California Sea Food Corp.

PAR. 5. In connection with the sale and distribution of sea food during the time periods mentioned and in the manner and under the circumstances herein set forth, the respondents Advance Realty Corp., formerly California Sea Food Co., Inc., a corporation, and its officers and directors, California Sea Food Corp., a corporation, and its officers and directors, Hunt Foods, Inc., formerly Hunt Bros. Packing Co., a corporation, and its officers and directors, and Norton Simon, individually and as guardian of the estates of Robert Ellis Simon and Donald Ellis Simon, minors, Lucille Ellis Simon, Myer Simon, Lucille Evelyn Simon, Frederick R. Weisman, Marcia Simon Weisman, Harold C. Brooks, individually and as guardian of the estate of Donald Ellis Simon, a minor, Evelyn Simon Brooks, Frederick R. Weisman, and Marcia Simon Weisman, as guardians of the estate of Richard Lee Weisman, a minor, Harold C. Brooks and Evelyn Simon Brooks, as guardians of the estate of Linda Joyce Brooks, a minor, individually and as their interests appeared, as partners trading and doing business under the fictitious firm name Val Vita Food Products, as former officers, directors, and controlling stockholders of Val Vita Food Products, Inc., a corporation, now dissolved, as partners formerly trading and doing business under the fictitious firm name California Sea Food Co., and as controlling stockholders of Advance Realty Corp., formerly California Sea Food Co., Inc., California Sea Food Corp. and Hunt Foods, Inc., formerly Hunt Bros. Packing Co., have paid and granted commissions, brokerage, or other compensation, allowances or discounts in lieu thereof, to the other parties to such transactions and to agents, representatives, and other intermediaries therein acting in fact for or in behalf or subject to the direct or indirect control of parties to such transactions other than said respondents.

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PAR. 6. Respondent Hunt Foods, Inc., while admitting that it formerly made sales of merchandise in connection with which it paid commissions or brokerage to the other parties to the transactions, or to agents or intermediaries therein acting subject to the control of parties thereto other than Hunt Foods, Inc., by way of mitigation, says that in February 1943, it was completely reorganized, with resulting changes in business policies and practices, including, among other things, an immediate cessation of the practice of packing its merchandise under labels other than its own, and that thereafter the practice of making payments of commissions or brokerage to purchasers or their agents was discontinued. The record shows, however, that up to July 1946 this practice had not been completely abandoned in connection with the sale of sea-food products, and that up to October 1946 the practice had not been abandoned in connection with the sale of merchandise other than sea food. Between February 1943 and the latter part of 1946, there were a number of transactions in which this respondent sold sea food and other merchandise to so-called organizational buyers, which represented the purchasers rather than the seller, and on which Hunt Foods, Inc., the seller, granted brokerage or commissions. There were, during the same period of time, a number of other transactions in which Hunt Foods, Inc., invoiced merchandise to brokers in the brokers' own names, drew drafts upon such brokers for the purchase price of the merchandise sold, less brokerage commissions, and in which transactions the merchandise was thereafter stored in the brokers' own warehouses and later sold by such brokers as their own merchandise to purchasers whose only dealings were with the brokers. It appears, therefore, that up to October 1946 at least, respondent Hunt Foods, Inc., in connection with the sale of its sea-food products and other merchandise, did in some of its transactions pay brokerage or commissions to the purchasers or to their agents or representatives.

These facts Hunt Foods, Inc., concedes to be true, but it contends that during the period from February 1943 to October 1946 the transactions in which brokerage was paid to purchasers or their agents amounted to less than 1 percent of Hunt's total volume of business, and that in the circumstances the public interest does not require further corrective action. This line of argument is not convincing. The complaint alleges, and Hunt Foods, Inc., in its answer admits, that for the fiscal year ending February 28, 1945, Hunt's net sales, not including net sales of \$10,802,589 made by California Conserving Co., Inc., the complete stock ownership of which was acquired by Hunt in

1945, was \$19,264,000. Thus, even less than 1 percent of Hunt's total sales for the period February 1943 to October 1946 was undoubtedly a very substantial number of transactions and involved a very substantial amount of dollar volume of business. It appears, moreover, that during all of the time periods involved in this proceeding the controlling stockholders of Hunt Foods, Inc., formerly Hunt Bros. Packing Co., were the same individuals who, during the same time periods, operated as partners under the names Val Vita Food Products and California Sea Food Co., and during the same time periods were officers, directors, and controlling stockholders of Val Vita Food Products, Inc., California Sea Food Corp. and Advance Realty Corp., formerly California Sea Food Co., Inc. In these circumstances, even if Hunt Foods, Inc., has now abandoned the illegal practices complained of, this fact does not affect the Commission's duty to proceed in the manner prescribed by the statute.

CONCLUSION

The paying and granting by the respondents herein, under the circumstances and in the manner aforesaid, of brokerage fees, commissions, or allowances in lieu thereof, to the other parties to sales transactions made in the course of commerce and to agents, representatives, and other intermediaries in such transactions acting for or in behalf or subject to the direct or indirect control of parties to such transactions other than said respondents, constitute violations of subsection (c) of section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the substitute answers of the respondents, a stipulation of facts executed by counsel for respondents, Hunt Foods, Inc., its officers and directors, and counsel supporting the complaint, briefs in support of and in opposition to the allegations of the complaint, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) of section 2 of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (15 U. S. C. Sec. 13) :

It is ordered, That the respondents Advance Realty Corp., a corporation, and its officers and directors, California Sea Food Corp., a corporation, and its officers and directors, Hunt Foods, Inc., a corporation, and its officers and directors, and Norton Simon, Lucille Ellis Simon, Myer Simon, Lucille Evelyn Simon, Frederick R. Weisman, Marcia Simon Weisman, Harold C. Brooks, Norton Simon, as guardian of the estate of Robert Ellis Simon, a minor, Harold C. Brooks, as guardian of the estate of Donald Ellis Simon, a minor, Frederick R. Weisman and Marcia Simon Weisman, as guardians of the estate of Richard Lee Weisman, a minor, Harold C. Brooks and Evelyn Simon Brooks, as guardians of the estate of Linda Joyce Brooks, a minor, individually and as partners trading and doing business under the fictitious firm name Val Vita Food Products, and as controlling stockholders of Advance Realty Corp., California Sea Food Corp., and Hunt Foods, Inc., and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the sale of sea food products or other merchandise in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Paying or granting, directly or indirectly, upon or in connection with any transaction involving the sale of sea food products or other merchandise, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof

(a) To any buyer in any such transaction;

(b) To any agent, representative or other intermediary acting for or in behalf of any party to any such transaction other than the respondents; or

(c) To any agent, representative or other intermediary subject to the direct or indirect control of any party to any such transaction other than the respondents.

It is further ordered, That the respondents shall, within 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.

Syllabus

IN THE MATTER OF
MID-WEST PRODUCTS (FORMERLY MID-WEST
RESEARCH LABORATORY)

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5300. Complaint, Mar. 28, 1945—Decision, Aug. 17, 1948

A research laboratory or a laboratory, as considered in connection with serums and medicinal preparations, means a place appropriately equipped and devoted to experimental studies in medicinal or pharmaceutical science and the application of medical and pharmaceutical principles in an endeavor to develop and to verify knowledge by tests and analyses of drugs or medicinal preparations by persons skilled in those arts.

There is a preference on the part of a substantial portion of the purchasing public for dealing with the manufacturer of products, and a preference for dealing with a concern which maintains and operates a research laboratory or a laboratory in connection with its business, or produces the medicinal preparations which it sells.

Where a corporation engaged in the interstate sale and distribution of serums and medicinal preparations for the treatment of poultry and domestic animals—

(a) Falsely represented through the use of the words "Research Laboratory" in its corporate name, and display thereof on its stationery and letterheads and in booklets and other advertising media, that it owned, operated or controlled a research laboratory or a laboratory; and

(b) Falsely represented, through the subsequently discontinued use of the word "manufacturers" on its letterheads and otherwise, that it owned, operated or controlled a factory or factories wherein the preparations listed in the statement which followed, were manufactured and that it was the manufacturer thereof;

The facts being that the sale of serums and bacterins purchased from other concerns, constituted the major portion of its business and it never owned, operated or controlled any plant or factory wherein they were manufactured;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that it was the manufacturer of all the preparations it sold, and that it owned, operated or controlled a research laboratory in connection with the production thereof; as a result whereof said public purchased large quantities of said preparations:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and receptive acts and practices in commerce.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. Joseph Callaway for the Commission.

Clem & Miller, of Sioux City, Ia., for respondent.