

Decision

50 F. T. C.

IN THE MATTER OF
PERRY HALSETH TRADING AS PERRY SALES COMPANY
DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 6009. Complaint, July 16, 1952—Decision, Sept. 14, 1953

Where an individual, engaged in the interstate sale and distribution of cameras, radios, pens, dolls, cutlery, bedspreads, and other articles, with a volume of business in excess of \$1,000,000 a year; in soliciting orders for and in selling and distributing his merchandise—

Made use, among other courses, of a plan of merchandising which involved, or might involve, the operation of games of chance, gift enterprises, or lottery schemes, pursuant to which he sent out in great quantities to members of the public, along with return envelopes, form letters, circulars, order blanks, and "sales" or push cards, for use, in accordance with a scheme, as typical, pursuant to which the customer who selected by chance that one of 39 girls' names displayed on the particular card which corresponded with that concealed under the card's master seal, received as a prize the comforter, bedspread, or other article pictured thereon; those pushing certain discs as disclosed by the numbers concealed thereunder, received certain lesser prizes; amount paid by customer for chance was similarly determined; and prospective customers or operators of the cards received, according to the aforesaid circulars, as a premium or prize for their efforts, in disposing of the merchandise through the use of such cards, a bedspread or other article equal in value to the main item, plus a premium of lesser value if an order was placed with respondent within 15 days following receipt of the offer; and

Thereby supplied to and placed in the hands of others, contrary to an established public policy of the United States Government, the means and instrumentality of conducting games of chance, gift enterprises, or lottery schemes in connection with the sale and distribution of merchandise, in which persons who selected and paid for the lucky or winning name and numbers received the designated articles, without additional expense, at prices which were much less than the normal retail prices thereof; those who did not select such a name or number received nothing for their money other than the privilege of making the push or punch; and whether a purchaser received an article or nothing for the money paid and the amount paid for the merchandise or chance to receive it were determined wholly by lot or chance:

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

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Wilkenfeld & Harris, of Chicago, Ill., for respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 16, 1952, issued and subse-

quently served its complaint in this proceeding upon respondent Perry Halseth, individually and trading as Perry Sales Company, charging him with the use of unfair acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by said hearing examiner upon the complaint, the answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested, and said hearing examiner, on February 9, 1953, filed his initial decision herein.

Within the time permitted by the Commission's Rules of Practice, respondent filed an appeal from said initial decision and the Commission, after duly considering said appeal and the record herein, issued its order denying said appeal.

The Commission is of the opinion, however, that the initial decision of the hearing examiner is deficient in certain respects, principally in that the order therein is inconsistent with the form of order which the United States Court of Appeals for the District of Columbia Circuit has determined is appropriate in cases where the facts are essentially similar to those in this case. *Hamilton Manufacturing Co. v. Federal Trade Commission*, 194 F. 2d 346, and *U. S. Printing & Novelty Co. v. Federal Trade Commission*, CCH Trade Reg. Serv. Par. 67,502 (June 4, 1953). Therefore, the Commission, being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Perry Halseth, is an individual trading and doing business under the name of Perry Sales Company with office and principal place of business located at 1250 West Van Buren Street in the City of Chicago, Illinois.

Respondent is now and for more than three years last past has been engaged in the sale and distribution of cameras, radios, pens, dolls, cutlery, bed-spreads and other articles of merchandise and has caused said merchandise when sold to be transported from his place of business in Chicago, Illinois, to purchasers thereof located in the various

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other States of the United States and in the District of Columbia. Respondent's volume of business has been in excess of \$1,000,000.00 per year and there is now and has been for more than three years last past a substantial course of trade by respondent in such merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 2. In the course and conduct of his aforesaid business in soliciting orders, selling and distributing merchandise, respondent sometimes deals directly with jobbers, retail stores and other business firms; sometimes respondent uses circulars, form letters, order blanks and return envelopes in direct mail solicitation; at other times respondent uses and has used a plan of merchandising which involves or may involve the operation of games of chance, gift enterprises or lottery schemes. Under the latter plan, respondent mails to each prospective customer advertising and solicitation material consisting of a form letter, circular, order blank, push card referred to by respondent as a sales card, and return envelope, copy for all of which is prepared by respondent or under his supervision. This literature is sent out to members of the public in great quantities—hundreds of thousands at a time—and orders are received from approximately 0.3 to 1 percent of the total number of recipients of said literature.

The circulars describe the merchandise which respondent offers and the letters explain how, through the use of the push cards, sales can be made to "friends, relatives, neighbors and co-workers" who may obtain the merchandise offered usually "for as little as 1¢ and not more than 39¢." Prospective customers also are told that as a premium or prize for their efforts in disposing of the described merchandise through use of the push card they may receive without cost a bedspread or other article of merchandise equal in value to the main item described in the circular, plus a premium of lesser value if an order is placed with the respondent within 15 days following receipt of the offer. Fountain pens or other small articles of merchandise are often included in the merchandise offered and shipped by respondent for use as additional prizes to purchasers of chances in connection with "push" card sales.

A typical push card has thirty perforated discs each of which is designated by a feminine name, and concealed within each disc is a number by which is determined the cost of each push. On the back of the card is a list of the names on the discs with spaces for writing in the names of the persons who may have pushed the corresponding discs. Upon the face of the card is a large master seal under which is one of the names appearing on the discs. This seal is to be removed only after all the discs have been sold and the person having pushed

the disc bearing the name corresponding to the one under the seal receives the comforter, bedspread, tablecloth, or other main article of merchandise pictured on the push card and described in the circular accompanying it. In addition to this main prize there are lesser prizes, such as fountain pens, which are distributed to persons who have pushed certain other specified discs.

The typical push card has on its face the following legend and instruction:

(Picture of comforter and bedspread)

S Do Not S
E Remove Seal E
A Until Entire A
L Card is Sold L

Numbers

1-19-22

Each Receive

A \$1.00

Fountain Pen

4 PRIZES

Lucky Name Under Large Red Seal

Receives Choice of a Beautiful

QUILTED COMFORTER,

BEDSPREAD OR TABLECLOTH

Numbers 1 to 39 Pay What You Draw

Numbers Over 39 Pay Only 39c

None Higher

Push out with Pencil

Panel bearing

Discs.

Persons having selected and paid for the lucky or winning name and numbers receive the designated articles of merchandise, without additional expense, at prices which are much less than the normal retail prices of said articles, but persons who do not select such lucky or winning name or numbers receive nothing for their money other than the privilege of making a push or punch from said card. Whether a purchaser receives an article of merchandise or nothing for the money paid, and the amount to be paid for the merchandise or the chance to receive said merchandise are thus determined wholly by lot or chance, and articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Respondent furnishes and has furnished various other similar push cards, form letters, circulars, and order blanks for use in the sale and distribution of his merchandise. The sales plan used in the sale and distribution of merchandise by means of these other push cards is the same as that hereinabove described varying only as to the merchandise offered, the price of each chance and the number of chances on each card.

PAR. 3. The order form used by respondent in connection with the aforesaid sales method contains no reference to the push card. Upon receipt of such an order properly filled out the respondent sends out his merchandise. He has no control over the buyer and has in fact no direct means of knowing whether the buyer will retain the merchandise himself or dispose of it by use of the push card or by some

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other method. However, the respondent does distribute push cards extensively, sends out accompanying letters describing their use, and does know that if his suggested plan is followed the merchandise shipped by him, excepting the special premium offered the operators of the push cards, will reach the ultimate purchaser through sales made under the push card plan through the sale and purchase of the push card chances.

The record specifically establishes that some individuals have used the push cards furnished by respondent in the distribution of merchandise received from respondent. Respondent's wide and continued use of the push cards confirms the conclusion that a substantial number of persons to whom respondent has furnished and furnishes said push cards have used and now use the same in selling and distributing respondent's merchandise in accordance with the aforementioned sales plan. Respondent thus supplies to and places in the hands of others the means and instrumentality of conducting games of chance, gift enterprises or lottery schemes in connection with the sale and distribution of his merchandise, all of which is contrary to established public policy of the Government of the United States.

PAR. 4. The sale and distribution of merchandise in the manner above described involves games of chance or the sale of chances to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plan or method used by respondent and by the element of chance involved therein and thereby have been and are induced to buy and sell respondent's merchandise.

The use by respondent of a sales plan or method involving sales and distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Perry Halseth, trading as Perry Sales Company or under any other name or names, his representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of

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cameras, radios, pens, dolls, cutlery, bedspreads or other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or any other lottery device or devices which are designed or intended to be used in selling or distributing said merchandise to the public by means of games of chance, gift enterprises or lottery schemes.

2. Shipping, mailing or transporting to agents or distributors, or to members of the purchasing public, push cards or any other lottery device or devices which are designed or intended to be used in the sale or distribution of respondent's merchandise to the public by means of games of chance, gift enterprises or lottery schemes.

3. Selling or otherwise disposing of any merchandise by means of or under a plan involving a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Consent Settlement

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IN THE MATTER OF
LAGOMARCINO-GRUPE COMPANY OF IOWA, DAVEN-
PORT BROKERAGE COMPANY, AND ANDREW S. LAGO-
MARCINO ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (C)
OF THE CLAYTON ACT, AS AMENDED

Docket 5784. Complaint, June 26, 1950—Decision, Sept. 15, 1953

Where a corporation, which was engaged in the buying and selling of fruits, vegetables, canned goods, sugar, candy, and other food products, and had become one of the largest wholesalers thereof in the United States and numbered among its stockholders a family group, allied by blood or marriage, which owned a substantial majority of all its stock and all of that of a corporate broker—

- (a) Purchased through said corporate broker substantial requirements of its food products from vendors, all, or substantially all, of whom paid said broker commissions or brokerage fees on said purchases; and

Where said broker, controlled as aforesaid, and acting as agent of or representative for said wholesaler, and subject to the direct control of those individuals who were members by blood or marriage of the aforesaid families, made up the group referred to, and owned a majority of the capital stock of said broker—

- (b) Received and accepted said fees as income from which dividends were paid to and received and accepted by its aforesaid stockholders:

Held, That such acts and practices of said corporations and of their aforesaid stockholders were in violation of subsec. (c) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Edward S. Ragsdale for the Commission.

Mr. Smith W. Brookhart and *Mr. Russell Hardy*, of Washington, D. C., for respondents.

CONSENT SETTLEMENT¹

Pursuant to the provisions 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. A. Section 13), the Federal Trade

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on September 15, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

Commission, on June 26, 1950, issued and subsequently served its complaint on the respondents, and each of them, named in the caption hereof, charging them, and each of them, with receiving and accepting commissions, brokerage fees or other compensation, allowances or discounts in lieu thereof, on purchases of food products in commerce made directly or indirectly for their own account in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

The respondents, and each of them, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, and review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answer and supplemental answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, are to be withdrawn from the record, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, and each of them, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission has reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Lagomarcino-Grupe Company of Iowa (named in the complaint as Lagomarcino-Grupe Company) is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Iowa, with its principal office and place of business located at 101 Valley Street, Burlington, Iowa.

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Said respondent, on the date of the issuance of the complaint and since several years prior to June 19, 1936, has been engaged in the business of buying and selling food products at wholesale within the United States. Such products include fruits, vegetables, canned goods, sugar and candy. It has become one of the large wholesalers of food products in the Middle Western States. On the date of the issuance of the complaint, it owned a 34% stock interest in Lagomarcino-Grupe Fruit Company, located at Galesburg, Illinois, and owned and operated a large number of branches, some of which were located at Creston, Ottumwa, Burlington, Cedar Rapids, Iowa City, Clinton, Muscatine, Fort Madison, Keokuk, Iowa, and Quincy, Illinois.

Lagomarcino and Grupe are family names. On the date of the issuance of the complaint and all times mentioned herein, a substantial majority of the capital stock of said respondent was owned by individuals who were members of the Lagomarcino or Grupe families by blood or marriage. For some time prior to June 26, 1950 and on that date, said respondent had issued and outstanding approximately 5,588 shares of capital stock, a substantial majority of which was, and for some time prior has been owned by those individuals who are named as individual respondents herein and as set forth in Paragraph 3 hereof.

From April 20, 1925 until dissolution of the latter on September 1, 1934, respondent, Lagomarcino-Grupe Company of Iowa, made substantial purchases of food products through Davenport Brokerage Company, a corporation not named as a respondent herein, the stock of which was 76% owned by said respondent. During the period from September 1, 1934 until September 1, 1936, Mr. E. H. Beattie operated a brokerage business as a sole proprietor doing business as Davenport Brokerage Company. Mr. Beattie held 10 shares of stock in Lagomarcino-Grupe Company during this period.

PAR. 2. Respondent Davenport Brokerage Company (named in the complaint as Davenport Brokerage Company, Inc.) is a corporation, organized, existing, and doing business under and by virtue of the laws of the state of Iowa, with its principal office and place of business located at 301 Union Arcade Building, Davenport, Iowa.

Said respondent was incorporated September 2, 1936, to engage, and since its incorporation and continuing to the present time it has engaged, in the business theretofore conducted by E. H. Beattie, doing business as Davenport Brokerage Company, and prior to that, by the original Davenport Brokerage Company, a corporation. During said period of time, respondent Lagomarcino-Grupe Company made substantial purchases of food products through respondent Davenport Brokerage Company.

Upon incorporation, 24% of the stock of respondent Davenport Brokerage Company was issued to E. H. Beattie, and the remainder to members of the Lagomarcino family and Grupe family. E. H. Beattie died on March 7, 1946. Thereafter, on January 2, 1947, the stock owned by his widow was purchased by members of the Lagomarcino family and members of the Grupe family.

After January 2, 1947, all of the capital stock of respondent Davenport Brokerage Company, was issued to, and at all times thereafter mentioned herein has been owned by, those stockholders of respondent Lagomarcino-Grupe Company of Iowa, who were members of the Lagomarcino or Grupe families by blood or marriage. For some time, and at the time of issuance of this complaint, respondent Davenport Brokerage Company has issued and outstanding approximately 1,000 shares of capital stock, all of which was and for some time had been, owned by those individuals who are named as individual respondents herein and as set forth in Paragraph 3 hereof.

PAR. 3. Each of the following respondents is an individual; is a member of the Lagomarcino or Grupe families by blood or marriage as indicated; and at the date of issuance of the complaint and for some time prior had owned the number of shares of capital stock of respondent Lagomarcino-Grupe Company of Iowa and/or respondent Davenport Brokerage Company, which is set forth opposite his or her name in columns appropriately designated:

*Capital Stock Ownership of Lagomarcino-Grupe Co. of Iowa
and of Davenport Brokerage Co., as of June 26, 1950*

Members of Lagomarcino Family	Lagomarcino- Grupe Company of Iowa	Daven- port Broker- age Co.
Andrew S. Lagomarcino.....	232	43
C. L. Lagomarcino.....	272	56
Joe J. Lagomarcino.....	280	57
John Lagomarcino.....	42½	9
Richard Lagomarcino.....	73	21
Gertrude Lagomarcino.....	35	169
Mayme Lagomarcino.....	195	15
Mamie Lagomarcino.....	472	72
Katherine S. Lagomarcino.....	89	20
Theresa Bley.....	17	23
Trula E. Voss.....	267	39
Subtotal owned by individual respondents who are members of Lagomarcino family.....	1974½	524

Members of Grupe Family	Findings	50 F. T. C.	
		Lagomarcino- Grupe Company of Iowa	Daven- port Broker- age Co.
Harold W. Grupe-----		586½	146
John D. Keehn-----		None	2
Dorothy D. Keehn-----		465	114
Helen Parker-----		479½	90
Edward Dornsife-----		None	1
Marion (Mrs. Edward) Dornsife-----		502	82
Patricia P. Filipowski-----		21	41
Subtotal owned by individuals who are members of Grupe family -----		2054	476
Total owned by individuals who are members of either Lago- marcino or Grupe families-----		4028½	1000
The following named respondents died on dates indicated :			
Rosanna Ogesbly-----		July 28, 1948	
Edward Dornsife-----		December 10, 1950	
Harold W. Grupe-----		June 12, 1952	

At the date of the issuance of the complaint, individuals who were members of the Lagomarcino or Grupe families by blood or marriage, and for some time prior thereto, the above-named individual respondents, directly or indirectly as owners of a substantial majority of the capital stock of respondent Lagomarcino-Grupe Company of Iowa and of all of the capital stock of respondent Davenport Brokerage Company have through such stock ownership elected the directors who in turn elected officers of the corporate respondents responsible for formulating, authorizing and directing all of their policies, practices and acts referred to herein. The individual respondents, who were neither officers nor directors of either of respondent corporations did not actively participate in said acts.

PAR. 4. In the course and conduct of its wholesale food business prior to and since September 2, 1936, respondent Lagomarcino-Grupe Company of Iowa, through the original Davenport Brokerage Company or through respondent Davenport Brokerage Company, continuously made such purchases of food products from many vendors with places of business located in several states of the United States; and respondents caused such food products so purchased to be transported from said states to destinations in other states.

PAR. 5. In the course of said business in commerce, beginning some years prior to September 1, 1934, and ending shortly thereafter, respondent Lagomarcino-Grupe Company of Iowa purchased through the original Davenport Brokerage Company, not named as a respondent, substantial quantities of food products from vendors, all or substantially all, of whom paid Davenport Brokerage Company commissions or brokerage fees on said purchases.

From 1925 until September 1, 1934, Davenport Brokerage Company, not named as a respondent herein, received and accepted as income said fees from which dividends were paid to, and they were received and accepted by, respondent Lagomarcino-Grupe Company of Iowa, in the form of dividends on the capital stock of the original Davenport Brokerage Company.

In turn, respondent Lagomarcino-Grupe Company of Iowa, transmitted and paid said fees to, and they were accepted and received by, the stockholders of said respondent in the form of dividends upon its capital stock.

In making said purchases, and in receiving and accepting and in transmitting and paying said fees, as above alleged, the original Davenport Brokerage Company was acting as agent or representative for respondent Lagomarcino-Grupe Company of Iowa, subject to its direct control and to the indirect control of those individuals who were members of the Lagomarcino or Grupe families by blood or marriage who owned a majority of its capital stock.

PAR. 6. In the course of said business in commerce, beginning September 2, 1936, and continuing to the present time, respondent Lagomarcino-Grupe Company of Iowa purchased through respondent Davenport Brokerage Company, substantial quantities of its requirements of food products from vendors, all, or substantially all, of whom paid respondent Davenport Brokerage Company, commissions or brokerage fees on said purchases.

Respondent Davenport Brokerage Company received and accepted said fees as income from which dividends were paid to and were received and accepted by, its stockholders as dividends on its capital stock.

In making said purchases, and in receiving and accepting and in transmitting and paying said fees, as above stated, respondent Davenport Brokerage Company was acting as an Agent or representative of respondent Lagomarcino-Grupe Company of Iowa, subject to its indirect control through, and subject to the direct control of, those individuals who were members of the Lagomarcino or Grupe families by blood or marriage who owned a substantial majority of the capital stock of respondent Lagomarcino-Grupe Company of Iowa and all of the capital stock of respondent Davenport Brokerage Company.

CONCLUSION

PAR. 7. The acts and practices of respondents individually and collectively, since June 19, 1936, in accepting and receiving commissions or brokerage fees, as above alleged, are in violation of subsection (c)

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of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. In receiving and accepting commissions, brokerage fees or other compensation, allowances or discounts in lieu thereof on purchases of food products in commerce as set forth in Paragraph 6 hereof, respondents, and each of them, have violated the provisions of Section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

ORDER

I. *It is ordered*, That the respondent, Davenport Brokerage Company, a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of fruits, vegetables, canned goods, sugar, candy and other products of whatsoever nature in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

(a) 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 any purchase in connection with which respondent Davenport Brokerage Company is the agent, representative, or other intermediary acting for, or in behalf of, or subject to the direct or indirect control of any buyer, including such control by any buyer exercised through the ownership or control of capital stock of Davenport Brokerage Company, by any stockholder or cooperating group of stockholders in such buyer who directly or indirectly controls such buyer.

(b) Transmitting, paying, or granting, directly or indirectly, any part of any commission, brokerage, compensation, allowance or discount, which is referred to in paragraph I (a) above, to any buyer or to any stockholder in any buyer, who is referred to in paragraph I (a) above, in the form of money, dividends, credits, services, facilities, or in any other form.

II. *It is further ordered*, That the respondents Lagomarcino-Grupe Company and its officers, directors, agents, representatives, and employees, directly or through any intermediary (including Davenport Brokerage Company) in connection with the purchase of fruits, vegetables, canned goods, sugar, candy and other products of whatsoever nature in commerce as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting from any seller, or from any agent, representative, or other intermediary acting for, or in behalf of, or subject to the direct or indirect control of respondents Lagomarcino-Grupe Company, including such control by said respondent exercised through

the ownership or control of capital stock of any such agent, representative, or other intermediary by any stockholder or cooperating group of stockholders of respondent Lagomarcino-Grupe Company, who directly or indirectly controls said respondent, anything of value as a commission, brokerage, or other compensation, or any discount or allowance in lieu thereof, in the form of money, dividends, credits, or in any other form, upon purchases for their own accounts.

III. *It is further ordered*, That the respondents Andrew S. Lagomarcino, C. L. Lagomarcino, Joe J. Lagomarcino, John Logomarcino, Richard Lagomarcino, Gertrude Lagomarcino, Mayme Lagomarcino, Mamie Lagomarcino, Katherine S. Lagomarcino, Theresa Bley, Trula E. Voss, John D. Keehn, Dorothy D. Keehn, Helen Parker, Marion Dornsife, and Patricia P. Filipowski, either in their individual or representative capacities, in connection with the purchase of fruits, vegetables, canned goods, sugar, candy, and other products of whatsoever nature in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting any part of any commission, brokerage, compensation, allowance, or discount which, in paragraphs I (a) and I (b) above, respondent Davenport Brokerage Company, is ordered to cease and desist from receiving or accepting and from transmitting, paying or granting, and which, in paragraph II above, respondent Lagomarcino-Grupe Company is ordered to cease and desist from receiving or accepting.

It is further ordered, That the complaint be dismissed as to Rosanna L. Ogesbly, Harold W. Grupe, and Edward Dornsife, deceased.

It is further ordered, That the respondents 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 said order.

LAGOMARCINO-GRUPE COMPANY OF IOWA, a corporation; DAVENPORT BROKERAGE COMPANY, a corporation; and ANDREW S. LAGOMARCINO, C. L. LAGOMARCINO, JOE J. LAGOMARCINO, JOHN LAGOMARCINO, RICHARD LAGOMARCINO, GERTRUDE LAGOMARCINO, MAYME LAGOMARCINO, MAMIE LAGOMARCINO, KATHERINE S. LAGOMARCINO, ROSANNA L. OGESBLY, THERESA BLEY, TRULA E. VOSS, HAROLD W. GRUPE, JOHN D. KEEHN, DOROTHY D. KEEHN, HELEN PARKER, EDWARD DORNSIFE, MARION DORNSIFE, PATRICIA P. FILIPOWSKI, individuals, individually and collectively as the owners of all the capital stock

of Davenport Brokerage Company, Inc., and a substantial majority of the capital stock of Lagomarcino-Grupe Company.

(sgd.) Smith W. Brookhart,
By SMITH W. BROOKHART,
Counsel for Respondents,
and each of them.

Dated: July 21, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this 15th day of September 1953.

Syllabus

IN THE MATTER OF

BEGA SEWING MACHINE, INC. ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 5893. Complaint, June 27, 1951—Decision, Sept. 18, 1953

Where a corporation and three officers thereof, engaged in the competitive interstate sale and distribution of completed sewing machines, and of imported sewing machine heads, on the back of the vertical arm of which the word "Japan" became covered by the attachment of a motor thereto, and on the front of some of which a bronze-colored metal medallion displayed the words "Made in Japan," "Made in Occupied Japan", or "Japan" in such small and indistinct fashion as not to be legible to those who bought the product or to the public—

- (a) Failed adequately to disclose on the said sewing machine heads imported by them that they were manufactured in Japan;

With the result of placing in the hands of dealers in their said products a means and instrumentality whereby they might mislead and deceive the purchasing public as to the place of origin thereof, and with tendency and capacity to lead members of the purchasing public into the erroneous belief that said machines were of domestic origin and thereby induce their purchase of such products; whereby trade was unfairly diverted to them from their competitors, including manufacturers and sellers of the domestic product and sellers also of the imported machines; and

- (b) Represented through the use of the phrase "Warranty Certified" in advertising brochures sent to dealers for use by them as a resale sales aid, and so implied, that they were guaranteeing their said sewing machines without limitation;

The facts being they did not guarantee the same to the purchasing public, but furnished dealers with an unsigned "20-Year Guarantee" certificate with each machine sold, for the use and signature of the dealer, if he so desired; terms of the guarantee certificate limited it to one year for the motor and accessories; and the certificate, as to the rest of the machine, limited the guarantee to the replacement of defective parts;

With tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that they were absolutely guaranteeing their said sewing machines and thereby induce members of the public to purchase the same:

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

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. William L. Taggart and *Mr. J. C. Williams* for the Commission.
Goldberg & Kelter, of New York City, for respondents.