

IN THE MATTER OF
GAMBLE-SKOGMO, INC., ET AL.

Docket 5575. Complaint, July 15, 1948—Decision, Oct. 28, 1954

Order of dismissal—following setting aside and remand by the Court of Appeals of the Commission's order to cease and desist, for the reason that the recommended decision was made by a substitute examiner who did not preside at the reception of evidence—of complaint charging a manufacturer and seller with violating section 3 of the Clayton Act and section 5 of the Federal Trade Commission Act through making sales of various merchandise to its 1600 retail dealer customers in many States on the condition that the purchasers not deal in similar goods of its competitors.

Before *Mr. Randolph Preston* and *Mr. Webster Ballinger*, hearing examiners.

Mr. William C. Kern, *Mr. William H. Smith* and *Mr. Andrew C. Goodhope* for the Commission.

Mr. W. P. Berghuis, of Minneapolis, Minn., for respondents

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Whereas, the United States Court of Appeals for the Eighth Circuit, by judgment entered on February 25, 1954, in the matter of Gamble-Skogmo, Inc., a corporation, et al., Petitioners, vs. Federal Trade Commission, No. 14657,¹ set aside the decision and order of the Commission issued in this proceeding on June 11, 1952,² and remanded the cause to the Commission for proceedings consistent with the Court's opinion; and

Whereas, the Court's opinion was based on the view that the recommended decision, in which credibility evaluation of witnesses on a personal basis was a salient factor, was made by a substitute hearing examiner who did not preside at the reception of the evidence, and that this constituted a violation of Section 5 (c) of the Administrative Procedure Act, 5 U. S. C. A. § 1004 (c);

It appearing that the examiner who presided at the reception of the evidence is unavailable to the Commission, and, hence, that the procedural deficiency which provided the basis for the Court's decision could be remedied only by a trial *de novo*, either in whole or in part; and

It further appearing that the allegations in the complaint as well as the evidence in the record relate to acts and practices occurring

¹ 211 F. 2d 106.

² 48 F. T. C. 1396.

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Order

more than six years ago and that the Commission has no information as to the respondents' current practices; and

The Commission being of the opinion that in the circumstances it is not in a position to find that a retrial of the case would be warranted:

It is ordered that the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to make such investigation of the current practices of the respondents as may be necessary and to take such further or other action with respect thereto as the circumstances may warrant.

Complaint

51 F. T. C.

IN THE MATTER OF

K. C. SNOW CROP DISTRIBUTORS, INC., ET AL.

CONSENT ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC.
2 (C) OF THE CLAYTON ACT AS AMENDED*Docket 6210. Complaint, June 1, 1954—Decision, Oct. 28, 1954*

Consent order requiring a Kansas City distributor of food products, chiefly frozen foods and frozen juices, to cease receiving from various sellers brokerage fees or commissions paid to its corporate brokerage agent on purchases made for its own account.

Before *Mr. John Lewis*, hearing examiner.

Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.

Gage, Hillix, Moore, Park & Jackson, of Kansas City, Mo., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U. S. C. Title 15, Section 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 K. C. Snow Crop Distributors, Inc., hereinafter sometimes referred to as Snow Crop, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri with its principal office and place of business located at 5th Street and Kaw River, Kansas City, Missouri. It was incorporated on or about March 7, 1947, with G. Arlon Wilson as President and Wendell R. Stopps as Secretary-Treasurer. These two individuals have owned and controlled the majority of the stock issued and outstanding in the corporate respondent since it was incorporated. During this entire period said respondent has been and is now engaged in the business of buying, selling and distributing frozen foods, frozen juices and other food products, all of which are hereinafter sometimes referred to as food products.

PAR. 2. Respondent Stopps & Wilson Brokerage Company, hereinafter sometimes referred to as the brokerage company, is a corporation organized, existing and doing business under and by virtue of the