

IN THE MATTER OF
LAFAYETTE FOODS, INC.

CONSENT ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. 2 (C)
OF THE CLAYTON ACT AS AMENDED

Docket 6223. Complaint, June 29, 1954—Decision, Oct. 28, 1954

Consent order requiring a wholesaler of food products in Lafayette, Ind., to cease accepting from sellers brokerage fees on purchases of frozen foods or other commodities for its own account or while acting as an intermediary for a buyer or subject to the buyer's control.

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

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

Stuart, Devol, Branigin & Ricks, of Lafayette, Ind., and *Winston, Strawn, Black & Towner*, of Chicago, Ill., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent Lafayette Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at Concord Road, Lafayette, Indiana. Respondent maintains branch offices at Chicago, Illinois, St. Louis, Missouri, and Indianapolis, Indiana.

PAR. 2. Respondent is a wholesaler of food products, who since October of 1945 has engaged in the purchase and sale of frozen foods, juices and canned goods, purchasing and selling substantial quantities of various types and varieties of frozen foods, juices and canned goods, including frozen vegetables, frozen fruits, frozen juices, frozen poultry, frozen fish, frozen meats, and some canned foods (all of which are hereinafter referred to as frozen foods).

Respondent in connection with its business also operates a wholly owned subsidiary, Continental Freezers, Inc., located at Lafayette, Indiana, which warehouses respondent's frozen foods.

Respondent is a substantial factor in the purchase and sale of frozen foods, operating a large number of refrigerated trucks used in selling such products to large grocery chains, many independent grocery stores, institutions, and other buyers.

PAR. 3. In the course and conduct of its business, since incorporation in October of 1945, and more particularly since January 1, 1950, respondent Lafayette Foods, Inc., has engaged, and is now engaged in commerce, as "commerce" is defined in the amended Clayton Act, purchasing frozen foods from sellers with places of business located in many states of the United States and causing such products to be transported from such places of business to respondent's places of business located in other states of the United States.

PAR. 4. Respondent Lafayette Foods, Inc., in the course and conduct of its business of buying food products for its own account in commerce as aforesaid, since October of 1945, and more particularly since January 1, 1950, has been and is now receiving and accepting from sellers, commissions, brokerages fees, or other compensation, or allowances or discounts in lieu thereof on purchases of frozen foods for its own account. As illustrative of the practices pursued by the respondent in receiving and accepting, directly or indirectly, commissions, brokerages fees or other compensation, or allowances or discounts in lieu thereof from interstate sellers are the following:

Respondent has purchased substantial quantities of frozen foods from Sodus Fruit Exchange of Sodus, Michigan, since 1945. Respondent since January 1, 1950, has received and accepted a 3 percent discount or commission on such purchases of this seller's products which is the customary rate of brokerage the seller paid its brokers for selling such frozen foods. Respondent is the only customer of this seller purchasing direct (that is, without the intervention of a broker), and is likewise the only customer receiving the 3 percent discount.

Respondent in March of 1953 purchased a substantial quantity of frozen concentrate orange juice from Fruit Industries, Brandenton, Florida. This specific sale was negotiated by Illinois Central Sale, Inc. of Chicago, Illinois, a brokerage firm representing the seller. The brokerage firm for its services in negotiating and selling the product received a 3 percent brokerage fee.

Respondent, however, thereafter had an understanding with this seller that it could make further purchases direct (that is, without the intervention of a broker) and that on such direct sales the 3 percent brokerage fee would be granted respondents on its purchases. Respondent subsequently purchased fruit juices from this seller and

has received the 3 percent brokerage fee formerly granted by the seller to its broker.

PAR. 5. The aforesaid acts and practices of respondent since January 1, 1950, in receiving and accepting directly or indirectly, commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof on purchases of frozen foods in commerce, as set forth above, are in violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 28, 1954, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding charges the respondent, a corporation, with having violated subsection (c) of Section 2 of the Clayton Act, as amended, by receiving and accepting from sellers, commissions, brokerage fees or other compensation, or allowances or discounts in lieu thereof, on purchases of frozen foods for its own account.

After the issuance and service of the complaint and the filing of respondent's answer thereto, a stipulation was entered into by respondent and counsel supporting the complaint, in which the respondent admits all the jurisdictional allegations set forth in the complaint and agrees that the order set forth in the stipulation shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waives any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulation.

The stipulation also provides, among other things, that all the parties request that the answer of the respondent be withdrawn, that they waive a hearing before a hearing examiner of the Commission, the making of findings of fact or conclusions of law, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which respondent may be entitled under the Clayton Act, as amended, or the Rules of Practice of the Commission. All parties agree that the stipulation, together with the complaint, shall constitute the entire record herein; that the order hereinafter set forth may be

entered in disposition of this proceeding without further notice; that the complaint herein may be used in construing the terms of said order which may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission, and that the signing of the stipulation and consent by respondent to the entry of the aforesaid order are for settlement purposes only and do not constitute an admission by respondent that it has violated the law as alleged in the complaint.

The stipulation is made a part of the record herein; the request that the answer of the respondent be withdrawn is granted; this proceeding is found to be in the public interest; and, in conformity with the terms of the stipulation, the following order is issued:

ORDER

It is ordered that respondent Lafayette Foods, Inc., a corporation, its officers, and its respective representatives, agents, or employees, directly or indirectly, or through any corporate or other device, in connection with the purchase of frozen foods or other commodities in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of frozen foods or other commodities made for its own account, or while acting for or in behalf of a buyer as an intermediate agent, or subject to the direct or indirect control of such buyer.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered that respondent Lafayette Foods, Inc., a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of October 28, 1954].