

IN THE MATTER OF
CORDOVA DISTRICT FISHERIES UNION ET AL.

CONSENT ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6261. Complaint, Nov. 5, 1954—Decision, July 16, 1955

Consent orders requiring the corporate operators of the only large clam packing plant in Alaska and a union of independent clam diggers and its members to cease concertedly fixing prices and restraining trade in Alaska's Cordova and Bering River area clam industry.

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

Mr. Paul H. LaRue for the Commission.

Mr. Roy E. Jackson, of Seattle, Wash., for Cordova District Fisheries Union, and Executive Secretary and members of the Executive Board thereof.

Ryan, Askren & Mathewson, of Seattle, Wash., for G. P. Halferty & Co., Halferty Canneries, Inc., and officers thereof.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the parties hereinafter referred to as respondents have violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in these respects as follows:

PARAGRAPH 1. Respondent Cordova District Fisheries Union, hereinafter referred to as respondent Union, is an unincorporated association, among whose members are individuals engaged in the digging and selling of clams in the Cordova and Bering River areas of Alaska. Its principal office and place of business is located at Cordova, Alaska.

Respondent Harold Z. Hansen is an individual and Executive Secretary of respondent Union with his office and place of business located at the same address.

Respondents Paul Graham, Knute Johnson and Edward King are individuals and members of the Executive Board of respondent Union.

The above named persons, individually and in their capacities as officials of respondent Union, have formulated, directed or controlled the policies and activities of said Union and in so doing have expressly

or impliedly authorized, performed, adopted or affirmed each of the acts and practices alleged in Paragraph Seven herein.

The acts and practices set forth in Paragraph Seven herein were performed by the above named officials of respondent Union, through the medium of said Union, with the approval of and on behalf of all its members and were intended to and did bind said members in the same manner and with the same effect as if they had individually engaged in same.

The members of respondent Union are too numerous and the changes in said Union's membership are too frequent to render it practicable to name as respondents and to bring before the Commission each and all members of respondent Union without manifest delay and inconvenience. Therefore, the Commission names and includes as respondents in this proceeding the above named officials of respondent Union, individually, as officials of respondent Union and as representing all members of said Union.

PAR. 2. Respondent G. P. Halferty & Co. is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 512 Colman Building, Seattle 4, Washington.

The following respondents are individuals and officers of respondent G. P. Halferty & Co.: Guy P. Halferty, President; Verona B. Kuhnley, Vice-President; Frank E. McConaghy, Vice-President; Cecil P. Urfer, Secretary and Jay S. Gage, Assistant Secretary and Treasurer.

The above named respondents have their offices and place of business at the same address as respondent G. P. Halferty & Co. and individually and in their capacities as officers of said corporation have formulated, directed or controlled the policies and business practices of respondent G. P. Halferty & Co. and in so doing have expressly or impliedly authorized, performed, adopted or affirmed each of the acts and practices alleged in Paragraph Seven herein.

PAR. 3. Respondent Halferty Canneries, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 512 Colman Building, Seattle 4, Washington. It is a wholly owned subsidiary of respondent G. P. Halferty & Co. and operates a clam packing plant at Cordova, Alaska.

The following respondents are individuals and officers of respondent Halferty Canneries, Inc.: Guy P. Halferty, President; Frank E. McConaghy, Vice-President; Cecil P. Urfer, Vice-President; Verona B. Kuhnley, Secretary and Jay S. Gage, Assistant Secretary and Treasurer.

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The above named respondents have their offices and place of business at the same address as respondent Halferty Canneries, Inc. and individually and in their capacities as officers of said corporation have formulated, directed or controlled the policies and business practices of respondent Halferty Canneries, Inc. and in so doing have expressly or impliedly authorized, performed, adopted or affirmed each of the acts and practices alleged in Paragraph Seven herein.

PAR. 4. All of the fishermen members of respondent Union, including clam diggers, are independent fishermen who own or rent their boats and gear. None of said fishermen members of respondent Union are employees of either of the corporate respondents herein. Respondent Union is the medium whereby its officials and clam digger members have performed the acts and practices hereinafter alleged in Paragraph Seven.

PAR. 5. Respondent Halferty Canneries, Inc. is wholly owned and controlled by respondent G. P. Halferty & Co. The same persons are officers of both corporations. Each of the acts and practices hereinafter alleged to have been performed by respondent Halferty Canneries, Inc. has been expressly or impliedly authorized, adopted or affirmed by respondent G. P. Halferty & Co.

PAR. 6. Respondent Halferty Canneries, Inc. makes substantial sales of clams, purchased from clam digger members of respondent Union and canned at its Cordova packing plant, to customers located in various States of the United States and causes clams so sold to be transported from the territory of Alaska to such customers. The clam packing plant operated by respondent Halferty Canneries, Inc. is the only large clam packing plant in Alaska. Gross sales of clams by respondent Halferty Canneries, Inc. for the year 1953 amounted to \$716,000. Both corporate respondents and the clam digger members of respondent Union have been and are now engaged in commerce in clams as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. In the course and conduct of their businesses, respondents G. P. Halferty & Co. and Halferty Canneries, Inc. are in competition with others likewise engaged in the purchasing, canning and selling of clams, except as such competition has been restrained or destroyed as hereinafter set forth.

Also except as such competition has been restrained or destroyed as hereinafter set forth, the clam digger members of respondent Union are in competition with each other in digging for clams and offering for sale and selling same to respondent Halferty Canneries, Inc.

PAR. 8. Pursuant to authority conferred by Act of Congress, the United States Department of the Interior annually issues regulations for the various Districts of Alaska establishing the seasons for digging clams, fixing limitations on the size and amount of clams to be taken and prescribing the type of equipment to be used.

The statute conferring regulatory powers over Alaska fisheries upon the Department of the Interior provides that no citizen of the United States shall be denied the right to dig for clams in any area of Alaska where fishing is permitted by the Secretary of the Interior.

Fishing is permitted by the Secretary of the Interior during specified seasons in the Cordova and Bering River areas of Alaska.

The regulations issued by the Department of the Interior covering the Cordova and Bering River areas of Alaska do not restrict, and under law could not restrict, the digging of clams to residents of these areas.

The distinction made by the Territory of Alaska in licensing resident and non-resident fishermen is for revenue purposes only and does not have the purpose or effect of excluding non-residents from digging for clams in Alaska.

PAR. 9. Respondent officers, board members and members of respondent Union, acting through and by means of respondent Union; respondents G. P. Halferty & Co. and Halferty Canneries, Inc.; and respondent officers of said corporate respondents have entered into and for more than three years last past have carried out an agreement, understanding, combination or conspiracy between and among themselves which has the purpose and effect of restricting, restraining, supporting and eliminating competition in the digging of clams and in the offering for sale, sale and distribution of clams in commerce in the Territory of Alaska.

As part of, pursuant to, and in furtherance of said agreement, understanding, combination or conspiracy, respondents have agreed to perform and they have performed the following acts and practices:

1. Determined, fixed and maintained the prices, terms and conditions at which clam digger members of respondent Union have offered for sale and sold raw clams;
2. Prevented the digging of clams and the offering for sale and selling of same in the Cordova and Bering River areas of Alaska unless and until the annual contract fixing the prices, terms and conditions at which such clams should be sold was entered into by respondents Union and Halferty Canneries, Inc.;
3. Prevented citizens of the United States who are not residents of the Prince William Sound region from digging for clams in the

Cordova and Bering River areas of Alaska for the purpose of offering for sale and selling same to respondent Halferty Canneries, Inc.;

4. Prevented citizens of the United States who were not members of respondent Union from digging for clams in the Cordova and Bering River areas of Alaska for the purpose of offering for sale and selling same to respondent Halferty Canneries, Inc.;

5. Restricted the offering for sale and sale of raw clams by clam digger members of respondent Union to respondent Halferty Canneries, Inc.

PAR. 10. The results and effects of the aforesaid agreement, understanding, combination or conspiracy and the acts and practices agreed upon and carried out as part of, pursuant thereto and in furtherance thereof have been and are to tend to:

1. Unduly enhance the price which the consuming public is required to pay for canned clams;

2. Limit the amount of clams dug in the Cordova and Bering River areas of Alaska;

3. Deny citizens of the United States the right to dig for clams in the Cordova and Bering River areas of Alaska and thus to prevent them from pursuing a means of livelihood;

4. Create a monopoly in respondents in the clam industry in the Cordova and Bering River areas of Alaska.

PAR. 11. The acts and practices of respondents as hereinabove alleged are all to the prejudice of the public, have a dangerous tendency to unduly hinder competition and to create a monopoly in respondents in the clam industry in the Cordova and Bering River areas of Alaska, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents named in the complaint in this proceeding are charged with having engaged in acts and practices which have a tendency unduly to hinder competition and to create a monopoly in the clam industry in the Cordova and Bering River areas of Alaska and constitute unfair methods of competition, in violation of Section 5 of the Federal Trade Commission Act.

Respondents represent two phases of the clam industry—(a) G. P. Halferty & Co., a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located in the Colman Building, Seattle 4, Washington; Halferty Canneries, Inc., a wholly-owned sub-

sidiary of respondent G. P. Halferty & Co., incorporated and doing business in the same State and at the same address as its principal, and operating a clam-packing plant at Cordova, Alaska; and Guy P. Halferty, Verona B. Kuhnley, Frank E. McConaghy, Cecil P. Urfer and Jay S. Gage, individually and as officers and directors of the corporate respondents above named, are purchasers of raw clams. (b) Cordova District Fisheries Union, an unincorporated association among whose members are individuals engaged in the digging and selling of clams in the Cordova and Bering River areas of Alaska, with its principal office and place of business at Cordova, Alaska; Harold Z. Hansen individually and as Executive Secretary of said association, and Paul Graham, Knute Johnson, and Edward King, individually and as members of the Executive Board of said association, are engaged or primarily interested in digging and selling clams.

The two groups of respondents filed separate answers to the complaint, and thereafter entered into separate stipulations with counsel in support of the complaint for consent orders, which have been approved by the Director and Assistant Director, Bureau of Litigation, and submitted to the hearing examiner.

The stipulations provide, among other things, that respondents admit all the jurisdictional allegations set forth in the complaint and that the record herein may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; that the stipulations, together with the complaint, shall constitute the entire record herein; that the complaint may be used in construing the order agreed upon, which may be altered, modified or set aside in the manner provided by the statute for orders of the Commission; that the signing of the stipulations is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order provided for in the stipulations and hereinafter included in this decision shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon.

All parties request that the answers heretofore filed by respondents in this proceeding be withdrawn, and expressly waive hearings before a hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, 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 respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission, including any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulations.

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The stipulations contain separate orders specifically applicable to the particular phases of the industry in which each group of respondents is engaged. Together these orders dispose of all the charges contained in the complaint, and substantially conform to the proposed order contained in the notice accompanying said complaint. The stipulations for consent order are therefore accepted; respondents' answers to the complaint herein may be withdrawn; this proceeding is found to be in the public interest; and the following order, which consists of all the provisions contained in the orders agreed upon, is issued; Accordingly,

ORDER

It is ordered, That respondent G. P. Halferty & Co., a corporation, its officers, representatives, agents and employees; respondent Halferty Canneries, Inc., a corporation, its officers, representatives, agents and employees; respondents Guy P. Halferty, Verona B. Kuhnley, Frank E. McConaghy, Cecil P. Urfer and Jay S. Gage, individually and as officers, and directors of respondents G. P. Halferty & Co., and Halferty Canneries, Inc., and their respective representatives, agents and employees, directly or through any corporate or other device in connection with the purchasing and distribution of raw clams dug in any fishing area or district of Alaska, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any agreement, understanding, combination or conspiracy between any one or more of said respondents, on the one hand, and any one or more of the following respondents, on the other hand, to wit: Cordova District Fisheries Union, its officers, representatives and agents; Harold Z. Hansen, Paul Graham, Knute Johnson and Edward King; the members of said Union and their agents, representatives and employees; or others not parties hereto, to do or perform any of the following acts:

1. Fixing, establishing, maintaining or adhering to or attempting to fix, establish, maintain or cause adherence to, by any means or method, uniform or minimum prices for the purchase of raw clams;
2. Jointly or collectively negotiating, bargaining or agreeing, by any means or method, as to the price or prices at which raw clams are to be purchased;
3. Purchasing raw clams only from residents of the Prince William Sound Region of Alaska;
4. Purchasing raw clams only from members of respondent Cordova District Fisheries Union;
5. Preventing clam diggers from offering for sale and selling raw clams to any other purchaser than G. P. Halferty & Co., and Halferty Canneries, Inc.

Provided, however, That nothing herein contained shall be deemed to prohibit respondents G. P. Halferty & Co., and Halferty Canneries, Inc., from entering into or continuing a bona fide partnership, joint operation or venture, or consolidation, for the purpose of operating one or more canneries, and in which the prices paid for raw clams are determined by said partnership, joint operation or venture, or consolidation, and where such determination is, under the contract establishing such partnership, joint operation or venture, or consolidation, binding upon all members thereof. This proviso shall not be construed as either an approval or a disapproval of any specific partnership, joint operation or venture, or consolidation, nor as permitting any such partnership, joint operation or venture, or consolidation, to be continued or formed for the purpose or with the effect directly or indirectly of rendering ineffective or unenforceable the inhibitions of this order and the purposes thereof.

It is further ordered, That respondent Cordova District Fisheries Union, an unincorporated association, its officers, representatives, agents and members; respondent Harold Z. Hansen, individually, as Executive Secretary of respondent Union and as representing all members of said Union; respondents Paul Graham, Knute Johnson and Edward King, individually, as members of the Executive Board of respondent Union and as representing all members of said respondent Union, all of whom are deemed to be parties respondent to this proceeding, and the agents, representatives and employees of each of said respondents, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of raw clams dug in any fishing area or district of Alaska, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any agreement, understanding, combination or conspiracy between any two or more of said respondents or between any one or more of said respondents and others not parties hereto to do or perform any of the following acts:

1. Fixing, establishing, maintaining or adhering to or attempting to fix, establish, maintain or cause adherence to, by any means or method, uniform or minimum prices for the sale of raw clams;
2. Jointly or collectively negotiating, bargaining or agreeing, by any means or method, as to the price or prices at which raw clams are to be offered for sale or sold;
3. Authorizing or empowering any association, group, corporation or union to negotiate, bargain or agree as to the selling price or prices of raw clams;
4. Preventing, by any means or method, non-residents of the Prince William Sound region of Alaska from digging for clams

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in the Cordova and Bering River areas of Alaska, or offering for sale and selling raw clams to any purchaser thereof;

5. Preventing, by any means or method, non-members of Respondent Cordova District Fisheries Union from digging for clams in the Cordova and Bering River areas of Alaska or offering for sale and selling raw clams to any purchaser thereof;

6. Preventing, by any means or method, clam diggers from offering for sale and selling raw clams to other purchasers than respondents G. P. Halferty & Co., and Halferty Canneries, Inc.

Provided, however, That nothing herein contained shall prevent any association of bona fide clam diggers from acting pursuant to and in accordance with the provisions of the Fisheries Cooperative Marketing Act (15 U. S. C. A. Secs. 521 and 522) and from performing any of the acts and practices permitted by said Act; and

Provided further, That nothing herein contained shall prevent collective bargaining between Respondent Cordova District Fisheries Union and any employer with respect to wages and working conditions of any employee members of said Union within those fishing districts wherein they may be.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of July, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Cordova District Fisheries Union, an unincorporated association, and Harold Z. Hansen, individually, as Executive Secretary of Cordova District Fisheries Union and as representing all members of Cordova District Fisheries Union, and Paul Graham, Knute Johnson, and Edward King, individually, as members of the Executive Board of Cordova District Fisheries Union and as representing all members of Cordova District Fisheries Union; G. P. Halferty & Co., a corporation and Halferty Canneries, Inc., a corporation, and Guy P. Halferty, Verona B. Kuhnley, Frank E. McConaghy, Cecil B. Urfer, and Jay S. Gage, individually and as officers of G. P. Halferty & Co. and Halferty Canneries, Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Complaint

IN THE MATTER OF
A. J. EINBENDER ET AL. TRADING AS EINBENDERS AND
THE VOGUE

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

Docket 6300. Complaint, Feb. 25, 1955—Decision, July 16, 1955

Consent order requiring furriers in St. Joseph, Mo., to cease false advertising, false invoicing, and misbranding of fur products, and otherwise failing to comply with requirements of the Fur Products Labeling Act.

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

Mr. John J. McNally and *Mr. Joseph Callaway* for the Commission.

Lyon, Wilmer & Bergson, of Washington, D. C., and *Mr. Louis Kranitz*, of St. Joseph, Mo., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that A. J. Einbender, Sylvia B. Einbender, Lester L. Einbender, and Edwin I. Einbender, individually and as copartners trading and doing business under the firm names of Einbenders and The Vogue, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents A. J. Einbender, Sylvia B. Einbender, Lester L. Einbender, and Edwin I. Einbender are individuals and copartners trading and doing business under the firm names of Einbenders and The Vogue, with their office and principal place of business located at 701 S. Eighth Street, St. Joseph, Missouri, and a branch store located at 724 Felix Street in the same city. Said individual respondents formulate, direct, and control the acts, practices, and policies of the said business.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the respondents have been, and are now, engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and the transportation and distribution in commerce, of fur products, and have sold, advertised,