

Complaint

IN THE MATTER OF

CORDOVA DISTRICT FISHERIES UNION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6369. Complaint, June 27, 1955—Decision, Feb. 4, 1956*

Consent order requiring an association of fishermen engaged in the catching of the Dungeness crab in the waters adjacent to Cordova, Alaska, and three canning firms, to cease concertedly fixing minimum prices and otherwise restraining competition in the sale and distribution of Dungeness crab and crab meat in commerce.

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

Mr. Fletcher G. Cohn and *Mr. Lewis F. Depro* for the Commission.

Mr. Roy E. Jackson, of Seattle, Wash., for Cordova District Fisheries Union, Harold Z. Hansen, James Nichols, Charles Simpler, Lyle Lufkin and John Johnson.

Dalton & Bibb, of Seattle, Wash., for John W. Dawson and William O. Lutz.

Mr. Herald A. O'Neill, of Seattle, Wash., for Cordova Fish & Cold Storage Co.

Medley & Haugland, of Seattle, Wash., for H. M. Parks Co.

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 this respect as follows:

PARAGRAPH 1. Respondent Cordova District Fisheries Union, hereinafter referred to as "respondent Union," is an unincorporated association among whose members are fishermen who fish for Dungeness crab in waters adjacent to Cordova, Alaska including Copper River and Prince William Sound area. Its principal office and place of business is at Cordova, Alaska, where its mailing address is P. O. Box 939, Cordova, Alaska.

PAR. 2. Respondent Harold Z. Hansen is an individual and is Executive Secretary of respondent Union, with his office and place of business being the same as that of respondent Union.

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Respondents James Nichols, Charles Simpler, Lyle Lufkin, and John Johnson are individuals who are Trustees of respondent Union. Said respondents, individually and in their respective 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 one or more of the policies, acts and practices herein alleged to have been performed by or through respondent Union. Such policies, acts and practices were performed through the medium of said respondent Union, with the approval, and on behalf, of all of its fishermen members, and particularly those engaged in the catching of Dungeness crabs in the waters adjacent to Cordova, Alaska, and were intended to, and did, bind said respondent members in the same manner and with the same effect as though they had individually engaged in same.

The members of respondent Union are too numerous and the changes in the membership of said Union too frequent to render it practicable to name as respondents herein each and all members of respondent Union without manifest delay and inconvenience. Therefore, there are named and included 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. 3. Respondents John W. Dawson and William O. Lutz are individuals composing a partnership trading as Copper Delta Sea Food Company, with their principal office and place of business being located at Cordova, Alaska. As part of their business, they are engaged in canning and packing the crabmeat secured from Dungeness crab caught in the waters adjacent to Cordova, Alaska. For the year 1953, they packed such crab in the amount of approximately \$52,000.

PAR. 4. Respondent Cordova Fish & Cold Storage Company is a corporation organized and existing under the laws of the State of California, with its principal office and place of business being located at 123 Jackson Street, San Francisco, California. It maintains a cannery, freezing plant, and cold storage facilities at Cordova, Alaska, where, during the year 1953, it packed crabmeat secured from Dungeness crab caught in the waters adjacent to Cordova, Alaska, in an amount of approximately \$250,000.

PAR. 5. Respondent H. M. Parks Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business being located in the

Colman Building, Seattle, Washington. It maintains a cannery at Cordova, Alaska, at which it packs Dungeness crab, and in 1953 packed 3,400 cases of such crab.

PAR. 6. All of the respondent fishermen members of respondent Union who are engaged in the catching of the Dungeness crab in the waters adjacent to Cordova, Alaska, are independent fishermen who own their own boats and either own or rent the traps and other gear used in the catching of said crabs. None of said respondent fishermen members of respondent Union are employees of any of the respondents who are engaged in the business of packing or canning Dungeness crab. Respondent Union is the medium whereby the respondent officials of respondent Union and its respondent fishermen members who are engaged in the catching of such crab, have performed the illegal acts and practices hereinafter alleged.

PAR. 7. In the course and conduct of their respective businesses, respondents John W. Dawson and William O. Lutz, doing business as the Copper Delta Sea Food Company, respondent Cordova Fish & Cold Storage Company and respondent H. M. Parks Company each makes substantial sales of Dungeness crabmeat and crab, which they purchase from the respondent fishermen members of respondent Union and pack and can in their respective plants, to customers located in the various States of the United States, and cause same to be transported from the Territory of Alaska to such customers. Said respondents, as well as the respondent fishermen members of respondent Union, maintain, and at all times herein mentioned have maintained, a regular course or current of trade in commerce in Dungeness crab and crabmeat in the Territory of Alaska, between said Territory and the various States of the United States, and among and between the several States of the United States. The respondent Union has been and is a medium whereby the other respondents, including the officials and members of the respondent Union, have committed and performed, in commerce, the alleged illegal policies, acts, and practices hereinafter set forth.

All respondents named herein have been, and are now, engaged in commerce in Dungeness crab and crabmeat as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their respective businesses, respondents John W. Dawson and William O. Lutz, doing business under the trade name of Copper Delta Sea Food Company, Cordova Fish & Cold Storage Company, and H. M. Parks Company are in competition in such commerce with each other, and with others likewise engaged in the business of purchasing, canning, and selling

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Dungeness crab and crabmeat except in so far as such competition has been restrained or destroyed by the policies, acts, and practices hereinafter set forth.

Also, except as it has been restrained or destroyed by the policies, acts, and practices hereinafter set forth, the respondent fishermen members of respondent Union who are engaged in catching Dungeness crab in the waters adjacent to Cordova, Alaska, are in competition in such commerce with each other and with others engaged in the same business, in offering for sale and selling such crab to the respondents named herein who are engaged in the business of canning, packing, and selling Dungeness crab and crabmeat, and to others engaged in similar businesses.

PAR. 9. Each of the respondents named herein has, directly or indirectly, participated in, approved, or adopted one or more of the alleged illegal policies, acts, and practices hereinafter set forth.

PAR. 10. For many years last past, and especially during the years 1952 and 1953, respondent Union and respondents Harold Z. Hansen, James Nichols, Charles Simpler, Lyle Lufkin, and John Johnson, acting individually and/or through or by means of respondent Union, respondents John W. Dawson and William O. Lutz, acting as a partnership doing business under the name of Copper Delta Sea Food Company, respondent Cordova Fish & Cold Storage Company, and respondent H. M. Parks Company, have entered into, maintained, and effectuated an agreement, understanding, or conspiracy between and among themselves to pursue, and they have pursued, a planned common and concerted course of action to adopt, fix, and adhere to the practice and policy of restricting and restraining competition in the offering for sale, sale, and distribution of Dungeness crab and Dungeness crabmeat, in commerce, in the Territory of Alaska, between said Territory and the several States of the United States, and among and between said States.

PAR. 11. As part of, pursuant to, and in furtherance of the aforesaid agreement, understanding, conspiracy, and planned common and concerted course of action, respondents have performed and pursued the following policies, acts, and practices:

(1) Said respondent Union has entered into annual contracts with respondents John W. Dawson and William O. Lutz, doing business as Copper Delta Sea Food Company, Cordova Fish & Cold Storage Company, and H. M. Parks Company, wherein and whereby have been fixed, established, and maintained the minimum prices which said last-named respondents shall each pay, and each has paid to respondent fishermen members of respondent Union for the raw

Dungeness crab which said fishermen members of respondent Union catch in the waters adjacent to Cordova, Alaska, during the respective periods covered by such contracts;

(2) Fixed and maintained the minimum prices at which all raw Dungeness crab caught in the waters adjacent to Cordova, Alaska, are bought and sold;

(3) Said respondents John W. Dawson and William O. Lutz, doing business as Copper Delta Sea Food Company, Cordova Fish & Cold Storage Company, and H. M. Parks Company have jointly negotiated with respondent Union as to the minimum prices each and all would pay to the respondent fishermen members of respondent Union for the raw Dungeness crab caught by such fishermen members of respondent Union in the waters adjacent to Cordova, Alaska;

(4) Said respondents John W. Dawson and William O. Lutz, doing business as Copper Delta Sea Food Company, Cordova Fish & Cold Storage Company, and H. M. Parks Company, have agreed to pay and have paid, through and by means of the aforesaid agreements between each of them and respondent Union, the identical prices to the respondent fishermen members of respondent Union for such Dungeness crab.

PAR. 12. The capacity, tendency, and effect of the aforesaid understanding, agreement, combination, conspiracy, and planned common and concerted course of action, and the policies, acts, and practices as hereinbefore set forth, have been, and are now, to unlawfully restrict, restrain and hinder the catching of Dungeness crab in the waters adjacent to Cordova, Alaska; to prevent price competition between and among respondents John W. Dawson and William O. Lutz, doing business as Copper Delta Sea Food Company, respondent Cordova Fish & Cold Storage Company, and respondent H. M. Parks Company in the purchase of such Dungeness crab; to prevent competition between said respondents and others engaged in the purchase and sale of such crab, and to prevent competition between and among the respondent fishermen members of respondent Union, and between such members and other fishermen who are not members of respondent Union but are engaged in catching such crab, in the sale of same to said respondents John W. Dawson and William O. Lutz, doing business as Copper Delta Sea Food Company, Cordova Fish & Cold Storage Company, and H. M. Parks Company, and to others engaged in the purchase and/or sale of Dungeness crab and crabmeat in interstate commerce: all within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 13. In addition to the effects, hereinbefore set forth, of said understanding, agreement, combination, conspiracy, and planned common and concerted course of action of the respondents and the policies, acts, and practices done pursuant thereto, they likewise have the capacity and tendency to unduly enhance the price which the public is required to pay for Dungeness crab and crabmeat when same is offered for sale to the consuming public.

PAR. 14. The policies, acts, and practices of the respondents, all and singularly, as hereinbefore set forth, are to the prejudice of the public, have a dangerous tendency to unduly hinder competition and to create a monopoly in respondents in the Dungeness Crab Industry for the Cordova area of Alaska, and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY EARL J. KOLB, 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 respondents in the Dungeness crab industry for the Cordova area of Alaska and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Respondents represent two phases of the Dungeness crab industry for the Cordova area of Alaska:

(a) Respondent Cordova District Fisheries Union, located at Cordova, Alaska, is an unincorporated association, among whose members are fishermen who fish for Dungeness crab in waters adjacent to Cordova, Alaska, including Copper River and Prince William Sound area. Respondent Harold Z. Hansen is Executive Secretary and respondents James Nichols, Charles Simpler, Lyle Lufkin and John Johnson are Trustees of said Cordova District Fisheries Union.

(b) The following respondents are engaged in canning and packing Dungeness crab and crabmeat: John W. Dawson and William O. Lutz, copartners trading as Copper Delta Sea Food Company located at Cordova, Alaska; Cordova Fish & Cold Storage Company, a California corporation, located at 123 Jackson Street, San Francisco, California; and H. M. Parks Co., Inc., a Washington corporation, (designated in the complaint as H. M. Parks Company) located in the Colman Building, Seattle, Washington.

After the issuance of said complaint and the filing of their answers thereto, the respondents entered into an agreement for consent order with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.

By said agreement, the answers heretofore filed by respondents were withdrawn and the parties expressly waived a hearing before the 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 the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, the respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if made after a full hearing, presentation of evidence and the findings and conclusions, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of the proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

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ORDER

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 representative of all members of said Union; James Nichols, Charles Simpler, Lyle Lufkin and John Johnson, individually, as Trustees of Cordova District Fisheries Union, and as representing all members of said Union; John W. Dawson and William O. Lutz, individually and as partners doing business under the trade name of Copper Delta Sea Food Company; Cordova Fish & Cold Storage Company, a corporation, and H. M. Parks Co., Inc., a corporation, who shall be deemed herein to be parties respondent, their respective officers, agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined by the Federal Trade Commission Act, of raw Dungeness crab or crabmeat caught in waters adjacent to Cordova, Alaska, including the Copper River and Prince William Sound area, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common and concerted course of action, understanding or agreement between or among 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, any prices for the purchase or sale of raw Dungeness crab or Dungeness crabmeat;
2. Jointly or collectively negotiating, bargaining or agreeing, by any means or method as to the price or prices at which raw Dungeness crab or crabmeat 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 purchase or selling price or prices of raw Dungeness crab or crabmeat.

Provided, however, That nothing herein contained shall prevent any association of bona fide crab fishermen from acting pursuant to and in accordance with the provisions of the Fisheries Cooperative Marketing Act (15 U.S.C.A. Sections 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 member of said Union within those districts where they may be employed.

Provided further, That nothing herein contained shall be deemed to prohibit one or more respondents 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 or fresh Dungeness crab or crabmeat 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 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.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 4th day of February, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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.

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IN THE MATTER OF
RANDOM HOUSE, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT¹

Docket 5901. Complaint, June 29, 1951—Decision, Feb. 7, 1956

Consent order requiring a New York City publisher to cease fixing and maintaining resale prices and terms and conditions of sale of the publisher's editions of books which it sold to its retail book seller customers while permitting book clubs to sell their own editions of the same books in competition with such retailers at any prices and on any terms they might determine.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Lewis F. Depro* for the Commission.

Weil, Gotshal & Manges, of New York City, for respondent.

Wolfson, Caton & Moguel, of New York City, for Book-of-the-Month Club, Inc., *amicus curiae*.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Antitrust Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Random House, Inc., hereinafter referred to as respondent, has violated the provisions of section 5 of the said Federal Trade Commission Act and section 2 (a) of the said Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13), 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:

COUNT I

PARAGRAPH 1. Respondent, Random House, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 457 Madison Avenue, New York, New York.

PAR. 2. Respondent is now, and for many years last past has been, engaged directly or indirectly in the publication, distribution, and sale of popular fiction and non-fiction books, commonly known as trade books.

¹ For consent settlement of Count III of complaint, see 48 F.T.C. 878.