

Complaint

IN THE MATTER OF

PUGET SOUND SALMON CANNERS, INC., ET AL.

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

Docket 6376. Complaint, June 28, 1955—Decision, May 8, 1956

Consent order requiring 13 corporate cannerys of salmon caught in Puget Sound and adjacent areas—charged in the complaint, along with their trade association, an organization of owners of Purse Seine vessels engaged in fishing for salmon in that area, and a union of salmon fishermen including those on such vessels, with collectively controlling the prices at which the salmon was purchased and sold, by means of agreements between and among themselves—to cease and desist from concerted price fixing; but Providing that if the proceeding still pending against the vessel owners' association and the fishermen's union is terminated in any other way than by a similar desist order, then this order shall cease to be of any effect.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Lewis F. Depro, *Mr. Fletcher G. Cohn* and *Mr. John J. McNally* for the Commission.

Pillsbury, Madison & Sutro, of San Francisco, Calif., for Alaska Packers Ass'n.

Peyser, Cartano, Botzer & Chapman, of Seattle, Wash., for American Packing Co.

Mr. Herald A. O'Neill, of Seattle, Wash., for Burk Canning Co., Inc., Dressel-Collins Fish Co., Fishermen's Packing Corp., Friday Harbor Canning Co., Sebastian-Stuart Fish Co. and Washington Fish & Oyster Co., Inc.

Norblad, Wyatt & MacDonald, of Astoria, Ore., for Columbia River Packers Ass'n., Inc.

Bogle, Bogle & Gates, of Seattle, Wash., for Farwest Fishermen, Inc. and New England Fish Co.

Kerr, McCord, Greenleaf & Moen, of Seattle, Wash., for Pacific American Fisheries, Inc.

Ryan, Askren & Mathewson, of Seattle, Wash., for Whiz Fish Products Co., Inc.

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 Sec-

Complaint

52 F. T. C.

tion 5 of the said 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 Puget Sound Salmon Cannery, Inc., hereinafter referred to as respondent "Cannery," is a membership corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 304 Spring Street, Seattle 4, Washington. Respondent, its officers, directors, and members are herein named and made parties respondent to this proceeding.

The following corporations and individuals, with the possible exceptions hereinafter set forth in Paragraph 3, were members of respondent Cannery as of December 1954, and based on information and belief, each has continued such membership. Therefore, because of that present or past status, and the acts, practices and policies in which they participated, either as members of said Cannery, or in cooperation or conjunction with the other respondents, as hereinafter set forth, each such respondent member is also named herein and made a party respondent individually. Each such respondent members of respondent Cannery is described as follows:

Respondent Alaska Packers Association is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 215 Fremont Street, San Francisco, California.

Respondent American Packing Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 711 Second Avenue Building, Seattle 4, Washington.

Respondent Burk Canning Company, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located in Bellingham, Washington.

Respondent Jay F. Carroll is an individual doing business as Anacortes Canning Company, with his principal office and place of business located at Anacortes, Washington.

Respondent Columbia River Packers Association, Inc., is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located in Astoria, Oregon.

Respondent Dressel-Collins Fish Company is a corporation organized and existing under the laws of the State of Washington, with

1251

Complaint

its principal office and place of business located at Pier 67, Seattle 1, Washington.

Respondent Farwest Fishermen, Inc., is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located in the Central Building, Third Avenue at Columbia Street, Seattle 4, Washington.

Respondent Fishermen's Packing Corporation is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Anacortes, Washington.

Respondent Friday Harbor Canning Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Friday Harbor, Washington.

Respondent New England Fish Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located in the Exchange Building, First Avenue and Marion Street, Seattle 4, Washington.

Respondent Pacific American Fisheries, Inc., is a corporation organized under the laws of the State of Washington, with its principal office and place of business located at 401 Harris Avenue, Bellingham, Washington.

Respondent Sebastian-Stuart Fish Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 24, Seattle 4, Washington.

Respondent Washington Fish & Oyster Company, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 54, Seattle 4, Washington.

Respondent Whiz Fish Products Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 2000 Alaskan Way, Seattle 1, Washington.

The other respondents are:

Respondent Purse Seine Vessel Owners Association is a non-profit membership corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 5301 North Ruby Street, Tacoma, Washington.

Respondent Local No. 3, Fishermen & Allied Workers Division, International Longshoremen & Warehousemen's Union is an unincorporated association, with its principal office and place of business located at 84 Union Street, Seattle 1, Washington.

Complaint

52 F. T. C.

PAR. 2. Respondent Cannery was organized in the year 1940 and is a trade association composed of packers, canners, and processors of salmon caught in Puget Sound and adjacent areas of the State of Washington. The membership of respondent Cannery changes from year-to-year. On or about December 1, 1954, there were 14 members of respondent Cannery who represent a great majority, if not all, of the companies engaged in the processing, canning and packing of salmon in the Puget Sound area.

Therefore, the respondent members of respondent Cannery, acting in conjunction with respondent Union in the manner hereinafter set forth, have the ability to, and do, control the prices at which various types and grades of raw salmon caught in the Puget Sound and adjacent areas in the State of Washington are purchased and sold.

PAR. 3. All of the corporations and individuals, hereinbefore described in Paragraph 1 as "members" of respondent Cannery, are engaged in the business of maintaining and operating canneries in the Puget Sound area of the State of Washington, where salmon caught in the waters of Puget Sound and adjacent areas are processed, canned and packed by said respondent members of respondent Cannery.

Respondent American Packing Company claims it withdrew from membership in respondent Cannery in 1951; respondent Friday Harbor Canning Company claims to have resigned in June 1954 and respondent Pacific American Fisheries, Inc., claims it has not been a member since 1950. With these three exceptions, all the other corporations and individuals hereinbefore described as members of respondent Cannery held such membership as of December 1954. Respondents American Packing Company, Friday Harbor Canning Company and Pacific American Fisheries, Inc., were members of respondent Cannery during periods when said respondent Cannery and its members participated in the understandings, agreements, conspiracies and planned common courses of action, as hereinafter set forth, and regardless of whether they were members or not in December 1954 they have nevertheless aided and abetted and participated in one or more of the wrongful acts and practices hereinafter alleged.

Each of said respondents, including respondents American Packing Company, Friday Harbor Canning Company and Pacific American Fisheries, Inc., has authorized, participated in, adopted, confirmed, or otherwise ratified, as members of respondent Cannery and/or individually, one or more of the acts, practices and policies of said respondent Cannery or of others of its members, as hereinafter set forth.

PAR. 4. Respondent Purse Seine Vessel Owners Association, hereinafter referred to as "respondent Owners," is an organization con-

1251

Complaint

sisting of the owners of about 150 Purse Seine vessels, engaged in the fishing for salmon in the waters of Puget Sound and areas adjacent thereto. The said owners own or control approximately 60% of all of the vessels engaged in such endeavors. Substantially all of the salmon caught by the said vessels is sold to respondent members of respondent Cannery for processing, canning and packing.

Some of respondent members of respondent Cannery, directly or indirectly, own or have mortgages on some of the Purse Seine vessels engaged in fishing for salmon in the Puget Sound area. But regardless of such ownership or mortgage rights, the fishermen who form the crews of such vessels are not considered, or dealt with, as employees of respondent members of respondent Cannery, who generally make no attempt to direct where or when such vessels shall fish, or to supervise their operation.

PAR. 5. Respondent Local No. 3, Fishermen & Allied Workers Division, International Longshoremen & Warehousemen's Union, herein referred to as "respondent Union," is now and at all times herein mentioned has been engaged in transacting business on behalf of its members, including fishermen engaged in fishing for salmon in the Puget Sound and adjacent areas, on the vessels belonging to or controlled by members of respondent Owners; said Union, acting in conjunction with respondent Cannery and/or respondent members of respondent Cannery and/or members of respondent Owners, does, in the manner herein set forth, control the prices at which such raw salmon is purchased and sold.

PAR. 6. Each of the respondents herein named has, directly or indirectly, participated in, approved or adopted one or more of the alleged illegal acts and practices hereinafter set forth.

PAR. 7. The fishing for, and the canning of, salmon caught in the Puget Sound area is one of the most important business enterprises in that territory. In 1952 the value of the salmon pack from this area was approximately \$5,000,000. In 1954, approximately 400,000 cases (a case contains 48 one-pound cans) of salmon caught in the Puget Sound area, were packed and canned, having an estimated total wholesale value of about \$12,000,000.

PAR. 8. In the course and conduct of their respective businesses, respondent members of respondent Cannery purchase, directly or indirectly, the raw salmon caught by the fishermen members of respondent Union in the waters of Puget Sound and areas adjacent thereto, from said fishermen members of respondent Union and/or from members of respondent Owners; after such purchase said respondent members of respondent Cannery process, can and pack said salmon and thereafter sell large quantities of same to purchasers

Complaint

52 F. T. C.

thereof located throughout the United States, and cause said salmon, when thus sold, to be transported from the Puget Sound area of the State of Washington to purchasers located in States of the United States other than the State of Washington.

Said respondent members of respondent Cannery, as well as the fishermen members of the respondent Union and the members of respondent Owners maintain, and at all times mentioned herein have maintained, a regular course or current of trade in commerce in salmon between the State of Washington and the various States of the United States, and among and between the several States of the United States.

The respondents, Cannery, Union and Owners, have been and are media by which respondent members of respondent Cannery, fishermen members of respondent Union and members of respondent Owners have committed and performed, and are committing and performing, in commerce, the alleged illegal acts, practices and policies hereinafter set forth.

All of the respondents named herein have been, and are now, engaged in commerce in the sale and distribution of salmon as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. Respondent members of respondent Cannery, in the course and conduct of their respective businesses of purchasing salmon from the fishermen members of respondent Union and/or members of respondent Owners, are in substantial competition, except as such competition has been restrained, lessened or eliminated, as hereinafter alleged, with each other and with others engaged in the same type of business, in so purchasing raw salmon caught in the Puget Sound area.

In the course and conduct of their respective businesses, the members of respondent Owners likewise are in competition with each other and with others engaged in the same type of business in negotiating for the sale and in selling to respondent members of respondent Cannery salmon caught by fishermen members of respondent Union in the waters of the Puget Sound area, except insofar as such competition has been lessened or eliminated, as hereinafter alleged.

The fishermen members of respondent Union would be in competition one with the other and with fishermen who are not members of respondent Union in the sale of salmon caught in the Puget Sound area, were it not for the understandings, agreements, combinations, conspiracies and planned common courses of action herein set forth.

PAR. 10. The fishermen members of respondent Union who catch the raw salmon in the Puget Sound area usually are employed by the skippers of the vessels, which, in turn, are owned by members of respondent Owners.

1251

Complaint

The respondent Union enters into contracts or agreements with respondent Owners and/or members of respondent Owners wherein are specified the compensation, working conditions, etc., of the members of respondent Union who fish in the Puget Sound area on the boats of members of respondent Owners.

The compensation provided for in any such contracts or agreements is based upon the prices paid by respondent members of respondent Cannerys to members of respondent Owners in accordance with the contracts or agreements entered into by and between respondent Union and respondent Cannerys and/or respondent members of respondent Cannerys.

The members of respondent Owners enter into contracts, agreements, or arrangements with respondent members of respondent Cannerys, which are either written or oral, whereby said members of respondent Owners sell the fish caught by the fishermen members of respondent Union to said respondent members of respondent Cannerys.

Thus, there are involved three contracts or agreements: (1) between the respondent Union and the respondent Owners and/or members of respondent Owners, which are known in the trade as "working agreements"; (2) between respondent Union and respondent Cannerys and/or respondent members of respondent Cannerys, which are known in the trade as "salmon agreements"; (3) between members of respondent Owners and respondent Cannerys and/or respondent members of respondent Cannerys.

Respondent Union also enters into contracts with respondent Cannerys and/or respondent members of respondent Cannerys wherein there are fixed and set forth the wages and working conditions of the non-fishermen members of respondent Union who work in the cannerys of respondent members of respondent Cannerys.

This arrangement has been in existence at least since 1949.

PAR. 11. Working agreements, which have been in effect for the last several years or at least since 1950, provide in part as follows:

2. The shares for salmon purse seining for all fish caught and delivered shall be as follows:

A. Share for boat seine and gear after deduction of gross stock expenses * * *:

(1) For vessel having a crew of nine (9) men, including skipper, or less, 33 1/3%.

(2) For vessel having a crew of ten (10) men, including skipper, 30.7%.

B. The remaining portion shall be divided equally among the crew, including the Captain.

This contract also provides:

6. No contract will be entered into by the owner with any cannery or reduction plant regarding prices or sale of fish or any other matters affecting the working conditions of the crew or their remuneration inconsistent with this

Complaint

52 F. T. C.

Agreement, unless said contract is approved by the Union and to which said contract the Union or its authorized agent becomes a contracting party in interest.

The contract further provides:

16 A. In the event that any Company or companies shall terminate the price agreement by the submission of 48-hour notice to the Union, then the Union may call special emergency mass meeting of the membership at the termination of said 48-hour notice. The Captain shall bring the vessel to port and release the entire crew in sufficient time for the members to attend said meeting.

B. There shall be no work on a seine or gear by the crew until twenty (20) days prior to the date of embarkation nor until the Working Agreement has been signed except with specific permission of the Union. No boat shall be allowed to leave for the fishing grounds nor shall any crew move any vessel from the home port of the vessel until the Price Agreement has been signed. Any vessel violating this section shall be declared unfair.

The contract finally provides that the contract shall remain in effect continuously unless terminated by either party by written notice.

PAR. 12. The salmon agreements which have been in effect for the last several years, at least since 1950, fixes the minimum fish prices for the various types or species of salmon caught and sold in the Puget Sound area for the fishing season covered by the particular Salmon Agreement.

PAR. 13. For many years last past, and more particularly since 1949, respondent members of respondent Cannerys, from the date of their affiliation with respondent Cannerys, by means of and through respondent Cannerys, and also by and through their individual acts, have entered into, maintained and effectuated an understanding, agreement, combination, conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain acts, practices and policies to hinder and suppress competition between and among themselves and with others in the purchase, sale and distribution of salmon caught in the Puget Sound area, in commerce, between the State of Washington and the several states of the United States.

PAR. 14. Pursuant to, and in furtherance of said understanding, agreement, combination, conspiracy and planned common course of action, respondent members of respondent Cannerys have acted in concert and in cooperation with each other, individually and through and by means of respondent Cannerys, and also with respondent Union, to do, among others, the following acts and practices:

(1) To determine and fix, and they have determined and fixed, and are still determining and fixing, the minimum purchase prices which each of said respondent members of respondent Cannerys, as well as the entire Puget Sound salmon industry, is to pay and has paid to

1251

Complaint

the members of respondent Owners, or to the captains of the vessels of such members of respondent Owners, or directly or indirectly to the fishermen members of respondent Union or to others, for the various types or species of salmon caught in the waters of Puget Sound and adjacent areas, which together are sometimes referred to herein as the "Puget Sound area";

(2) To prevent and eliminate, and they have prevented and eliminated, and are still preventing and eliminating, any and all price competition between and among said respondent members of respondent Cannery in the purchase of such salmon;

(3) To eliminate and prevent, and they have eliminated and prevented, and are still eliminating and preventing any and all competition as to the minimum prices to be paid in the purchase of salmon, between respondent members of respondent Cannery and others who also purchase raw salmon in the Puget Sound area for processing, packing, canning and shipping same in commerce between and among the various States of the United States.

PAR. 15. For many years last past, and more particularly since 1949, respondent Cannery, respondent members of respondent Cannery, acting individually and/or by or through respondent Cannery, respondent Owners and respondent Union have entered into, maintained and effectuated an understanding, agreement, combination and conspiracy to pursue, and they have pursued, a planned common course of action to adopt, fix and adhere to certain acts, practices and policies to hinder and suppress competition in the purchase, sale and distribution of salmon, caught in the Puget Sound area, in commerce between the State of Washington and the several States of the United States.

PAR. 16. Pursuant to and in furtherance of said understanding, agreement, combination, conspiracy and planned common course of action, each of said respondents has acted in concert and cooperation with one or more of the other respondents to do, among others, one or more of the following acts and practices:

(1) To determine and fix, and they have determined and fixed, and are still determining and fixing the minimum fish prices which the fishermen members of respondent Union receive for the sale to respondent members of respondent Cannery of the various species of raw salmon caught by said fishermen in the Puget Sound area;

(2) To eliminate, and they have eliminated, and are still eliminating, any and all competition between and among the fishermen members of respondent Union in the sale by them of the salmon which they catch in the Puget Sound area;

Complaint

52 F. T. C.

(3) To eliminate, and they have eliminated, and are still eliminating, all competition in the sale to respondent members of respondent Cannery of fresh or raw salmon caught in the Puget Sound area;

(4) To adopt and maintain, and they have adopted and maintained, and are still adopting and maintaining, an arrangement whereby respondent Union enters into contracts or agreements, known as "salmon agreements," with respondent Cannery and/or one or more of respondent members of said respondent Cannery, whereby the minimum fish prices for each type or species of raw salmon caught in the Puget Sound area are fixed and determined for the fishing season covered by such contract or agreement;

(5) To prevent, and they have prevented, and are still preventing, fishermen from selling the salmon, which they have caught in the Puget Sound area, to respondent members of respondent Cannery at prices lower than those fixed and set by such salmon agreements, which are entered into by and between respondent Cannery and/or respondent members of respondent Cannery and respondent Union;

(6) To enter into, and they have entered into, and are still entering into, an arrangement or understanding whereby respondent Owners and/or members of respondent Owners, acting individually or through and by means of respondent Owners, and respondent Union enter into agreements or contracts known as "working agreements" whereby and wherein are fixed and determined, in the manner and by the method herein described, the "wages" of fishermen members of respondent Union for the period covered by such contracts or agreements;

(7) To enter into, and they have entered into, and are still entering into, an arrangement or understanding whereby the result and effect of such working agreements by and between respondent Owners and/or members of respondent Owners and respondent Union have been, and are, that the members of respondent Owners are restrained and prohibited from using their vessels to fish for salmon in the Puget Sound area until and unless respondent Cannery and/or respondent members of respondent Cannery have agreed with respondent Union, by means of executed salmon agreements, upon the prices which respondent members of respondent Cannery will pay to members of respondent Owners for the various types of species of salmon caught in the Puget Sound area by fishermen members of respondent Union;

(8) To prevent, and they have prevented, and are still preventing, any raw salmon from being caught or sold in the Puget Sound area until and unless a working agreement or agreements between the respondent Union and respondent Owners and/or members of re-

1251

Decision

spondent Owners have been duly executed for the then current season, and also until there has been executed a salmon agreement or agreements between respondent Union and respondent Cannery and/or respondent members of respondent Cannery for the then current season whereby the minimum prices for the purchase and sale of all types or species of raw salmon caught in the Puget Sound area have been fixed and established.

PAR. 17. The capacity, tendency and effect of the aforesaid understandings, agreements, combinations, conspiracies and planned common courses of action and the acts, policies, practices and things done thereunder and pursuant thereto by the respondents, as hereinbefore set forth, have been, and are now, to unlawfully restrict, restrain and hinder the catching or production of salmon in the Puget Sound area, and have been, and are now to unlawfully restrict, restrain, hinder and prevent price competition between and among the respondent members of respondent Cannery, between and among the fishermen members of the respondent Union, and between and among the members of respondent Owners, in the purchase and sale of the various types or species of salmon caught in said area, in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 18. In addition to the effects hereinbefore set forth, the understandings, agreements, combinations, conspiracies and planned common courses of action of the respondents and the acts, practices and policies of the respondents likewise have the capacity and tendency to substantially increase the cost of food by their effect on the prices which the public is required to pay for salmon caught in the Puget Sound area and sold in commerce, as aforesaid.

PAR. 19. The acts and practices of the respondents, all and singularly, as hereinbefore set forth, are to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION AS TO CERTAIN RESPONDENTS BY WILLIAM L. PACK,
HEARING EXAMINER

The complaint in this matter charges the respondents with entering into a combination in restraint of trade in violation of the Federal Trade Commission Act. An agreement has now been entered into by counsel supporting the complaint and certain of the respondents, Alaska Packers Association, American Packing Company, Burk Cannery Company, Inc., Columbia River Packers Association, Inc., Dressel-Collins Fish Company, Farwest Fishermen, Inc., Fishermen's

Packing Corporation, Friday Harbor Canning Company, New England Fish Company, Pacific American Fisheries, Inc., Sebastian-Stuart Fish Company, Washington Fish and Oyster Company, Inc., and Whiz Fish Products Company, Inc. (referred to in the complaint as Whiz Fish Products Company), which agreement provides, among other things, that said respondents admit all of the jurisdictional allegations in the complaint; that as to that part of this proceeding which is disposed of by the agreement the answer of each of said respondents to the complaint shall be considered as having been withdrawn and that the record, insofar as it pertains to said respondents, on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that as to that part of the proceeding which is disposed of by the agreement each of said respondents waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights each of said respondents may have to challenge or contest the validity of the order entered in accordance with the agreement; that the order hereinafter set forth may be entered in disposition of the proceeding as to said respondents, such order to have the same force and effect as if entered after a full hearing; that the order may be altered, modified or set aside in the manner provided for other orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by any of said respondents that it has violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding as to said respondents, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. (a) Respondent Alaska Packers Association is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 215 Fremont Street, San Francisco, California.

(b) Respondent American Packing Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 711 Second Avenue Building, Seattle 4, Washington.

(c) Respondent Burk Canning Company, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located in Bellingham, Washington.

1251

Decision

(d) Respondent Columbia River Packers Association, Inc., is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located in Astoria, Oregon.

(e) Respondent Dressel-Collins Fish Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 67, Seattle 1, Washington.

(f) Respondent Farwest Fishermen, Inc., is a corporation organized and existing under the laws of the State of Washington (incorrectly stated in the complaint as the State of Oregon) with its principal office and place of business located in the Central Building, Third Avenue at Columbia Street, Seattle 4, Washington.

(g) Respondent Fishermen's Packing Corporation is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Anacortes, Washington.

(h) Respondent Friday Harbor Canning Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Friday Harbor, Washington.

(i) Respondent New England Fish Company is a corporation organized and existing under the laws of the State of Maine (incorrectly stated in the complaint as the State of Washington), with its principal office and place of business located in the Exchange Building, First Avenue and Marion Street, Seattle 4, Washington.

(j) Respondent Pacific American Fisheries, Inc., is a corporation organized under the laws of the State of Delaware (incorrectly stated in the complaint as the State of Washington), with its principal office and place of business located at 401 Harris Avenue, Bellingham, Washington.

(k) Respondent Sebastian-Stuart Fish Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 24, Seattle 4, Washington.

(l) Respondent Washington Fish & Oyster Company, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 54, Seattle 4, Washington.

(m) Respondent Whiz Fish Products Company, Inc. (incorrectly designated in the complaint as Whiz Fish Products Company) is a corporation organized and existing under the laws of the State of

Order

52 F. T. C.

Washington with its principal office and place of business located at 2000 Alaskan Way, Seattle 1, Washington.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of said respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Alaska Packers Association, American Packing Company, Burk Canning Company, Inc., Columbia River Packers Association, Inc., Dressel-Collins Fish Company, Farwest Fishermen, Inc., Fishermen's Packing Corporation, Friday Harbor Canning Company, New England Fish Company, Pacific American Fisheries, Inc., Sebastian-Stuart Fish Company, Washington Fish and Oyster Company, Inc., and Whiz Fish Products Company, Inc., 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 purchase, or offering to purchase, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of raw or fresh salmon caught in the fishing area of Puget Sound, 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 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. Entering into or carrying out, or attempting to enter into or carry out any "salmon agreement" as defined and explained in the complaint herein, or any other contract, agreement or understanding having the same or similar provisions:

2. Fixing, establishing, adopting, maintaining or adhering to, or attempting to fix, establish, adopt, maintain or cause adherence to, by any means or method any price at which raw or fresh salmon is to be purchased or sold;

3. Jointly or collectively negotiating, bargaining or agreeing by any means or method as to the price or prices at which said raw or fresh salmon is proposed to be, or is, purchased or sold;

4. Authorizing or empowering any association, group, corporation, or union to negotiate, bargain or agree as to the prices to be paid in the purchase or sale of any such raw or fresh salmon;

Provided, however, That nothing herein contained shall be construed or interpreted as preventing or prohibiting any respondent named herein, individually, from purchasing or selling, or bargaining

1251

Decision

for the purchase or sale of such salmon with any boat owner, boat captain, or any other single seller or buyer.

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

Provided further, That nothing herein contained shall be deemed to prohibit one or more of the respondents herein 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 of raw salmon 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 of or with the effect, directly or indirectly, of rendering ineffective or unenforceable the inhibitions of this order and the purposes thereof.

Provided further, That if the pending proceeding against respondents Purse Seine Vessel Owners Association and Local No. 3, Fishermen & Allied Workers Division, International Longshoremen & Warehousemen's Union is finally terminated in any manner except by the issuance of an order to cease and desist, either (a) by consent, or (b) by final order of the Commission not subject to further review, or (c) by order of the Commission, which, although subject to further review, continues effective, requiring said respondents Union and boat Owners Association to cease and desist from the same or similar acts or practices provided by the order contained herein, then this order shall terminate and cease to be of any effect.

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 8th day of May, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Alaska Packers Association, American Packing Company, Burk Canning Company, Inc., Columbia River Packers Association, Inc., Dressel-Collins Fish Company, Farwest Fishermen, Inc., Fishermen's Packing Corporation, Friday Harbor Canning Company, New England Fish Company, Pacific

Decision

52 F. T. C.

American Fisheries, Inc., Sebastian-Stuart Fish Company, Washington Fish and Oyster Company, Inc., and Whiz Fish Products Company, 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
HELENA RUBINSTEIN, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECS. 2 (d) AND 2 (e) OF THE CLAYTON ACT*Docket 6441. Complaint, Nov. 8, 1955—Decision, May 9, 1956*

Consent order requiring a manufacturer of cosmetics, beauty aids, and toilet preparations, with principal place of business in New York City, to cease violating Secs. 2 (d) and 2 (e) of the Clayton Act, as amended, by paying demonstrator allowances, cooperative advertising materials and allowances, and promotional allowances to competing customers in amounts not proportionally equal as required by the statute but determined on the basis of individual negotiations which resulted in different and arbitrary terms to different customers.

Before *Mr. Robert L. Piper*, hearing examiner.

Mr. Donald K. King for the Commission.

Sherman & Goldring, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that Helena Rubinstein, Inc., hereinafter designated as respondent, has violated and is now violating the provisions of sub-sections (d) and (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Helena Rubinstein, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at East Hills, Long Island, New York.

PAR. 2. The respondent is now, and for a number of years has been, engaged in the business of manufacturing and selling cosmetics, beauty aids, and toilet preparations. Said products are sold to customers with places of business located throughout the several states of the United States and in the District of Columbia for resale to consumers within the United States.

PAR. 3. In the course and conduct of said business, respondent has engaged in commerce as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act, having shipped its products or caused them to be transported from its said place of business to said customers with places of business located in the several states of the United States and in District of Columbia.