

Complaint

53 F.T.C.

IN THE MATTER OF

E. A. AARON & BROS., INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(C)
OF THE CLAYTON ACT

Docket 6606. Complaint, July 31, 1956—Decision, Dec. 5, 1956

Consent order requiring three frozen food concerns—buyer, seller, and broker—to cease engaging in illegal brokerage transactions in violation of sec. 2(c) of the Clayton Act as amended, in the course of which a Chicago wholesaler received through its wholly-owned brokerage firm commissions of from $2\frac{1}{4}$ to 3%, and on one brand 4¢ per dozen, on purchases for its own account from a packer-seller in New Jersey.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Cecil G. Miles for the Commission.

Hopkins, Sutter, Owen, Mulray & Wentz, by *Mr. Daniel Walker*, of Chicago, Ill., for E. A. Aaron & Bros., Inc. and Mid-States Frozen Food Marketers, Inc.

Dorsey, Burke & Keber, by *Mr. Peter Keber*, of New York City, for Seabrook Farms Co.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C., Title 15, 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 E. A. Aaron & Bros., Inc., hereinafter sometimes referred to as buyer respondent or as Aaron, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 4220 S. Kildare Avenue, Chicago, Illinois, with a branch office located at 46 South Water Market, Chicago, Illinois. Respondent Aaron is engaged in the wholesale distribution of frozen fruits and vegetables selling principally to independent grocers and food merchants and to various institutions in and around Chicago, Illinois.

Respondent purchases such food products from a number of sellers located in various states other than the state in which the buyer respondent is located, which sellers ship such food products across state lines to the buyer respondent at its place of business in Illinois,

or to the buyer respondent's customers when so directed by said buyer respondent. Buyer respondent's sales for the past several years have been approximately \$9,000,000 annually.

Respondent Aaron has two wholly owned subsidiaries incorporated under the laws of the State of Illinois. One of these subsidiaries is Mid-States Frozen Food Marketers, Inc., a brokerage organization which is named in this complaint as a party respondent. Respondent Aaron and its wholly owned subsidiaries, including Mid-States, have the same officers and directors and operate out of the same offices, using the same facilities. Therefore, buyer respondent Aaron, through its officers and directors, exercises complete authority and control over the business conducted by said subsidiaries, including the direction of their purchase, sales and distribution policies.

In the conduct of its business as aforesaid respondent Aaron makes substantial purchases of food products in commerce from various packers through its wholly owned and controlled brokerage firm, Mid-States Frozen Food Marketers, Inc., on which purchases respondent Aaron receives and accepts, directly, or indirectly through its wholly owned brokerage firm, a brokerage fee or commission in an amount ranging from $2\frac{1}{4}\%$ to 3% of the net purchase price, except on one brand or label owned by Mid-States but assigned to seller respondent Seabrook Farms Co. On this particular brand Seabrook pays Mid-States at the rate of 4¢ per dozen. This is the part of the buyer respondent's business which is being challenged by this complaint.

On or about April 4, 1955, all of the capital stock of E. A. Aaron & Bros., Inc., was acquired by and transferred to Consolidated Foods Corporation, whose headquarter offices are at 135 LaSalle Street, Chicago, Illinois. The assets of the Aaron Corporation were not taken over by Consolidated and the corporate structure of respondent Aaron, as well as its wholly owned subsidiaries, including respondent Mid-States Frozen Food Marketers, Inc., remains unchanged.

PAR. 2. Respondent Mid-States Frozen Food Marketers, Inc., hereinafter sometimes referred to as Mid-States or as broker respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 4220 S. Kildare Avenue, Chicago, Illinois, and with a branch office located at 46 South Water Market, Chicago, Illinois. Respondent Mid-States is engaged principally in the food brokerage business covering several states, or parts thereof, in the midwest as its sales territory, representing various principals in the sale of their food products, chiefly frozen fruits and vegetables, hereinafter sometimes referred to as food products.

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Respondent Mid-States does a substantial brokerage business, receiving annually in brokerage commissions approximately \$110,000. About 90% of said revenue is obtained through sales of the food products of its principal, Seabrook Farms Co., the seller respondent named in this complaint.

A substantial part of respondent Mid-States brokerage business is acting as buying agent in making purchases for its parent company, E. A. Aaron & Bros., Inc., the buyer respondent named herein. On these purchases for, or sales to its parent corporation it receives from some of its principals a brokerage fee or commission ranging from approximately 2% to 3%, except on one brand owned by respondent Mid-States but assigned to seller respondent Seabrook. On this particular brand respondent Mid-States receives a commission from Seabrook at the rate of 4 cents per dozen. After collecting these brokerage fees or commissions from its various principals on said sales to buyer respondent Aaron, said brokerage fees or commissions are remitted by the broker respondent Mid-States to the buyer respondent E. A. Aaron & Bros., Inc.

PAR. 3. Respondent Seabrook Farms Co., hereinafter sometimes referred to as seller respondent or as Seabrook, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located near Bridgeton, New Jersey, but with its Post Office address as Seabrook, New Jersey.

The seller respondent is now, and continuously for many years past has been, engaged in the business of processing, packing, selling and distributing frozen foods and vegetables, hereinafter sometimes referred to as food products, produced, processed and packed in the State of New Jersey. Respondent Seabrook sells and distributes these food products throughout the eastern section of the United States but principally in states east of the Mississippi River and either ships or causes said products to be shipped to customers located in states other than the State of New Jersey.

Respondent Seabrook sells and distributes its food products in some instances direct to wholesale distributors and to chain stores, and in other instances it sells and distributes said food products to wholesale distributors and chain stores through its brokers or sales agents appointed and designated by it to represent respondent Seabrook in effecting such sales. For these services the seller respondent pays or allows these brokers or sales agents a brokerage fee or commission usually at the rate of approximately 2% of the net selling price of the food products sold. However, respondent Seabrook pays

Mid-States Frozen Food Marketers, Inc., the broker respondent named herein, at the rate of 3% on all sales of its Seabrook brand products, and 2¼% on its remaining brands, except one which is owned by respondent Mid-States, but assigned to respondent Seabrook. On this particular brand Seabrook pays Mid-States, at the present time, at the rate of 4 cents per dozen commission. Respondent Seabrook is a substantial processor and packer of frozen foods and vegetables in the State of New Jersey, with annual sales approximating \$22,000,000.

In the course and conduct of its business as aforesaid, respondent Seabrook during the past few years has paid and is now paying something of value as a commission, brokerage, or other compensation or discount in lieu thereof, as indicated above, to at least one of its brokers, Mid-States Frozen Food Marketers, Inc., one of the respondents named herein, on substantial sales made for Seabrook by Mid-States to the brokers parent corporation, E. A. Aaron & Bros., Inc. by whom it is wholly owned and controlled. This and any similar practices by seller respondent is the part of seller respondent's business which is being challenged by this complaint.

PAR. 4. In the course and conduct of their businesses as aforesaid, respondents, and each of them, in the purchase and sale of said food products in commerce, have shipped and transported or caused these food products to be shipped or transported from said states of origin to destinations in another state. There has been at all times mentioned herein a continuous course of trade in commerce as "commerce" is defined in the aforesaid Clayton Act in said food products across state lines between buyer and broker respondents, and the seller respondent named herein, as well as other sellers of food products not specifically named. Said food products are sold and distributed for use, consumption or resale within the various states of the United States.

PAR. 5. The acts and practices of buyer and broker respondents named herein in receiving and accepting directly or indirectly something of value as a commission, brokerage or other compensation or allowance or discount in lieu thereof on their purchases of food products as alleged and described above, and the acts and practices of seller respondent named herein in paying or allowing directly or indirectly something of value as a commission, brokerage or other compensation, allowance or discount in lieu thereof on sales of its products to purchasers for their own account in the manner and by the method alleged and described above are each in violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The Federal Trade Commission issued its complaint on July 31, 1956, against respondents E. A. Aaron & Bros., Inc., a corporation existing under the laws of the State of Delaware, with its principal office and place of business located at No. 4220 S. Kildare Avenue, Chicago, Illinois; Mid-States Frozen Food Marketers, Inc., a corporation existing under the laws of the State of Illinois, with its principal office and place of business located at No. 4220 S. Kildare Avenue, Chicago, Illinois; and Seabrook Farms Co., a corporation existing under the laws of the State of New Jersey, with its principal place of business located near Bridgeton, New Jersey, with its Post Office address as Seabrook, New Jersey. The complaint charges the respondents with violation of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13).

After issuance and service of said complaint upon all of the parties respondent, all entered into an agreement for a consent order with counsel in support of the complaint disposing of all of the issues in this proceeding, which agreement was duly approved by the Director 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 of 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 parties expressly waived a hearing before a hearing examiner or the Commission, the making of findings of fact or conclusions of law by a hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before a hearing examiner or 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 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 findings and conclusions thereon, 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 for other 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 this 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:

ORDER

It is ordered, That the respondents, E. A. Aaron & Bros., Inc., a corporation, and Mid-States Frozen Food Marketers, Inc., a corporation, and their officers, directors, agents or employees, directly or indirectly, or through any corporate or other device, in connection with the purchase or sale of food products 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 or brokerage, or other compensation, allowance or discount in lieu thereof, upon any purchase or sale of food products by or for the account of E. A. Aarons & Bros., Inc., or any of its subsidiaries or parent corporation, or any subsidiaries of such parent corporation, or on any other purchase or sale where either respondents E. A. Aaron & Bros., Inc., or Mid-States Frozen Food Marketers, Inc., or both, are the agents, representatives, or other intermediaries acting for or on behalf of, or are subject to the direct or indirect control of, any such buyer.

It is further ordered, That Seabrook Farms Co., a corporation, and its officers, directors, agents or employees, directly or indirectly, or through any corporate or other device, in connection with the sale of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the

direct or indirect control of such buyer, anything of value as a commission or brokerage, or other compensation, allowance or discount in lieu thereof, upon or in connection with any sale of its food products to such buyer for his own account.

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 5th day of December, 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.

Decision

IN THE MATTER OF
MAXIMILIAN GOTTLIEB ET AL. TRADING AS
EMPIRE WOOLEN MILLS

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 6609. Complaint, Aug. 17, 1956—Decision, Dec. 6, 1956

Consent order requiring a manufacturer at Woonsocket, R.I., to cease violating the Wool Products Labeling Act by representing the constituent fibers of piece goods falsely as "65% Beaver, 35% Wool" on attached labels, sales invoices and shipping memoranda, and on labels furnished to customers to be attached to garments manufactured from said wool products.

Mr. R. D. Young, Jr. for the Commission.

Mr. Sidney Silverstein, of Woonsocket, R.I., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 17, 1956, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products and the furnishing of incorrect labels to customers for use in connection with the sale of such products. After being served with said complaint, respondents appeared by counsel and entered into an agreement containing consent order to cease and desist, dated October 4, 1956, purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice and Procedure.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. Said agreement further provides that respondents waive 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 they may have to challenge or contest the validity of the order to cease