

Complaint

53 F.T.C.

IN THE MATTER OF
HASKINS CANNING CORPORATION

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

Docket 6720. Complaint, Feb. 5, 1957—Decision, June 19, 1957

Consent order requiring a sardine cannery in Lubec, Me., to cease, in selling through brokers, allowing certain customers a 5% discount from list or market price on their purchases of canned sardines and paying its brokers in those cases 10¢ per case, which was less than its brokerage fee of 3% or 5% of the purchase price—thus allowing those customers a discount in lieu of brokerage in an amount equal to the difference between the percentage discount and the 10¢ per case—in violation of sec. 2(c) of the Clayton Act.

Mr. Cecil G. Miles and Mrs. Lewis F. Depro for the Commission.
Mr. Oscar Hartman, President, Haskins Canning Corporation,
Lubec, Me., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Haskins Canning Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Maine, with its principal office and place of business located at Lubec, Maine.

PAR. 2. Respondent is engaged in the business of selling and distributing sardines, packed, processed and canned at its canning plant, located in the City of Lubec, State of Maine.

PAR. 3. In the course and conduct of its said business, since January 1, 1954, respondent has shipped and transported its sardines or causes them to be shipped or transported from the State of Maine to destinations in other states of the United States. 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 sardines across state lines between respondent and the purchasers of its sardines. Said sardines are sold and distributed for use, consumption or resale within the various states of the United States.

PAR. 4. Respondent packs sardines in two types of cans, one of which has an opening key attached and the other of which does not, and is designated a keyless can. Respondent sells sardines packed in both types of cans, in commerce, to buyers through brokers. As compensation for services rendered in effecting such sales respondent pays its brokers a brokerage fee.

Respondent, since January 1, 1954, has given its brokers authority to sell its sardines at either the list or market price, or at a discount of five per cent from such price and sales have been effected for respondent since January 1, 1954, by such brokers at both the list or market price, and at a discount of five per cent from list or market price.

In connection with sales made by respondent's brokers at the list or market price, respondent pays its brokers an amount equal to five percent of the purchase price in the case of sardines packed in cans with keys, and an amount equal to three per cent of the purchase price in the case of sardines packed in keyless cans.

Said respondent, in connection with sales made by its brokers in commerce at a discount of five per cent from list or market price, pays its brokers an amount equal to ten (10) cents per case regardless of whether the sales are of sardines packed with or without keys. Such amount of ten (10) cents per case is less than respondent's brokerage of three percent or five per cent of the purchase price.

Respondent, in granting a discount of five per cent from list or market price to some buyers has allowed and granted them a discount in lieu of brokerage in an amount equal to the difference between the three per cent or the five per cent, and the ten (10) cents per case.

PAR. 5. Since January 1, 1954, in connection with the sale of sardines in commerce, as above alleged and described, respondent has granted and allowed discounts in lieu of brokerage in substantial amounts to certain of its buyers who purchased respondent's sardines in commerce at list or market price less the discount of five per cent.

PAR. 6. The aforesaid acts of the respondent constitute a violation of the provisions of subsection (c) of Section 2 of the above mentioned Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Section 13).

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that the respondent, in connection with the sale and distribution in commerce of sardines packed, processed and

canned at its canning plant; has granted and allowed discounts in lieu of brokerage in substantial amounts to certain of its buyers, in violation of § 2(c) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, § 13).

After the issuance of the complaint, respondent and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director and the Assistant Director, Bureau of Litigation of the Commission, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent Haskins Canning Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business located in Lubec, Maine.

The agreement provides, among other things, that the respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondent 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 it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of § 2(c) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C., Title 15, § 13). Accordingly, the Hearing Examiner finds this proceeding to be in the public interest and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

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Decision

It is ordered, That respondent Haskins Canning Corporation, a corporation, its officers, representatives, agents or employees, directly or through any corporate or other device, in connection with the sale and distribution of sardines, or other food products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. 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, any allowance or discount in lieu of brokerage, or any part or percentage thereof, by selling its sardines, or other food products, to such buyer at prices reflecting a reduction from the prices at which sales of such sardines, or other food products, are currently being effected by respondent to other buyers where such reduction in price is accompanied by a reduction in the regular rate of commission, brokerage or other compensation currently being paid by respondent to its brokers; or

2. Selling sardines, or other food products, direct to some buyers, without the use of brokers, at prices reflecting a reduction from the prices at which sales of such sardines, or other food products, are currently being effected by respondent to others, where such reduction reflects or is in lieu of the full brokerage normally paid, or any part or percentage thereof; or

3. In any other manner, paying, granting or allowing, directly or indirectly, to any buyer, or anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyers, anything of value as a commission, brokerage or other compensation or any allowance or discount in lieu thereof upon, or in connection with any sale of sardines, or other food products, to such buyer for its own account.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 32.1 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 19th day of June, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Haskins Canning Corporation, a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF
WILLIAM ADAMS, INC., ET AL.

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

Docket 6575. Complaint, June 22, 1956—Decision, June 20, 1957

Order requiring a company in New York City to cease selling cutlery assembled from English or domestic blades and tines and Japanese handles without disclosing the foreign origin of the handles, and representing on containers of English cutlery combined with Japanese handles that such products were of English origin.

Mr. Morton Nesmith supporting the Complaint.

Netter & Netter, by *Mr. Richard Netter* of New York City and *Mr. Nathan L. Silberberg* of Washington, D. C., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

STATEMENT OF THE CASE

On June 22, 1956 Commission complaint was issued charging respondents with unfair and deceptive acts and practices and unfair methods of competition in commerce in connection with their business of selling cutlery. Answer was filed which admitted the jurisdictional allegations of the complaint and certain of the factual allegations. The answer also denied other factual allegations, the conclusions embodied in the complaint and set up certain affirmative defenses. The charges, denials, admissions and affirmative defenses will be discussed under the Findings of Fact. Hearings were held in New York and Philadelphia for the taking of evidence in support of the complaint after which respondents filed motion to dismiss, supported by memorandum brief. Answer was filed to the motion, supported by brief. After consideration of the motion and brief, answer to the motion, brief in support of the answer and the record, the motion was denied without prejudice to the right to renew it when the taking of evidence was completed. A hearing was then held in New York for the taking of evidence on behalf of respondents and a subsequent hearing was set in Washington, D.C. for the same purpose. Before the hearing was held, by agreement of counsel, it was stipulated that an affidavit of Mr. Edward Greeman be substituted in lieu of hearing him testify and order was entered making the affidavit a part of the record.

Respondents then rested their defense and renewed the motion to dismiss. Action on renewal of the motion was reserved and both