

Complaint

IN THE MATTER OF
ARNOLD VOGL ET AL. DOING BUSINESS AS RIVIERA
PACKING CO. ET AL.

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

Docket 6752. Complaint, Mar. 27, 1957—Decision, Dec. 18, 1957

Consent order requiring canners of sardines, with principal office at Eastport and plants at Eastport and Milbridge, Maine—customarily selling through brokers who received commissions of up to 5 percent of the market price—to cease making illegal brokerage payments to customers in violation of section 2(c) of the Robinson-Patman Act by selling canned sardines directly to purchasers at prices as much as 5 percent below the market price, and by permitting brokers to make sales at 5 percent below market price and paying them less than the usual fee, with the result that the buyer received part of the brokerage.

Mr. Lewis F. Depro for the Commission.

Regosin & Edwards, of New York City, for respondents.

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 violated and are now violating the provisions of section 2(c) 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. Respondents Arnold Vogl, Edith Vogl, and Erna Fisher, sometimes hereinafter referred to as individual respondents, are individuals and copartners doing business under the firm name and style of Riviera Packing Co. with their principal office and place of business located at Eastport, Maine.

Respondent Milbridge Canning Corp., sometimes hereinafter referred to as corporate respondent, is a corporation organized and existing under the laws of the State of New York, with its plant and place of business located at Milbridge, Maine, and its principal office located at Eastport, Maine.

The individual respondents are and have been officers and sole stockholders of the corporate respondent.

PAR. 2. The partnership business of the individual respondents consists of the processing, canning, and packing of sardines and the sale and distribution thereof. The plant where the processing, can-

Complaint

54 F.T.C.

ning, and packing has been and is now performed is located in the city of Eastport, in the State of Maine.

The corporate respondent has been and is now engaged in the processing, canning, and packing of sardines at its plant located in the city of Milbridge, in the State of Maine. The sardines packed by said corporate respondent are sold through the office of Riviera Packing Co. in Eastport, Maine, although shipped from the corporate respondent's plant at Milbridge, Maine.

PAR. 3. All of the individual respondents have cooperated and acted together in formulating the policies and directing the business carried on under the names of Riviera Packing Co. and Milbridge Canning Corp. Respondent Arnold Vogl is now and has been president of the corporate respondent and has acted in the capacity of a general manager, actively engaged in the formulation of the policies and the direction of the business of both the partnership and the corporate respondent.

PAR. 4. Respondents, in the course and conduct of their said business, are engaged in commerce, as "commerce" is defined in the Clayton Act, in that they sell and distribute sardines to purchasers thereof located in States other than the State of Maine where shipment originates and cause such product to be shipped and transported from their plants in the State of Maine to destinations in other States throughout the United States. There is now and has been a constant course and flow of trade and commerce in such sardines across State lines between respondents in the State of Maine and purchasers located in other States and, therefore, respondents are subject to the jurisdiction of the Federal Trade Commission.

PAR. 5. Respondents pack sardines in two types of cans, one known as a keyless can and the other having a key attached. The keyless cans consist of three sizes, namely, $\frac{1}{4}$ pound, $\frac{3}{4}$ pound and 1 pound cans, while the cans having keys attached are of the $\frac{1}{4}$ pound capacity.

Respondents sell sardines packed in both types of cans in the aforementioned commerce to buyers through brokers and, in some instances, directly to buyers.

On sales through brokers respondents pay or allow a brokerage fee for services rendered and sales are generally made on the basis of FOB Maine, meaning FOB Eastport.

Respondents allow a brokerage fee of 3 percent from the list market price for the sale of sardines in keyless cans and 5 percent in cans with keys. That is, on sales made by respondents' brokers at list or market price, a brokerage fee equal to 3 percent of the purchase price is paid

by respondents on sardines packed in keyless cans, and a brokerage fee of 5 percent of the purchase price is paid by respondents on sardines packed in cans with keys.

PAR. 6. The business of the corporate respondent actually is that of the individual respondents because of their ownership of its entire capital stock and their control over its operations. Also respondent Arnold Vogl, who is the operating head of the corporate respondent, likewise manages and directs the activities of the partnership business, carried on under the firm name of Riviera Packing Co.

During the year 1954 the corporate respondent packed sardines under its name and also that of the partnership business. The sales personnel and the location of the sales office of the corporate respondent are the same as for the partnership business.

The corporate respondent is engaged in making direct sales of sardines to buyers without the intervention of a broker and such sales have been made at prices lower than list or market price and, at times, at prices equal to 5 percent less than such list or market price.

PAR. 7. Since early in 1954 respondents have authorized their brokers to sell their sardines at either list or market price, or at a discount of 5 percent from such price and, since such time, sales of respondents' sardines have been made by their brokers at the full list or market price, and also at a discount of 5 percent off such list or market price.

In connection with those sales by respondents' brokers at 5 percent off list or market price, respondents pay such brokers, in some instances, amounts which are less than the brokerage fees aforementioned of 3 percent or 5 percent of the purchase price, on sardines in cans without and with keys, respectively. Such lesser amounts paid to their brokers usually are equal to 10 cents per case of sardines sold, but in some instances brokerage fees based upon rates other than 10 cents per case have been paid or allowed.

PAR. 8. On those sales made through brokers, respondents, in granting to some buyers a discount of 5 percent from list or market price, have allowed and granted discounts in lieu of brokerage in varying amounts equal to the difference between the usual brokerage fees of 3 percent or 5 percent and the 10 cents per case, or such other rate of brokerage as has been granted or paid to the broker as hereinbefore alleged.

On those sales made directly by the respondents, either in the name of the corporate respondent or in the name of the partnership, to buyers at list or market prices less 5-percent discount, they have thereby granted and allowed such buyers a discount in that amount in lieu of brokerage.

Decision

54 F.T.C.

PAR. 9. The discounts which respondents have granted or allowed since early in 1954 in lieu of brokerage to certain of their buyers who purchased respondents' sardines in commerce, as hereinbefore alleged and described, at list or market price less the discount of 5 percent, are substantial in amount.

PAR. 10. The aforesaid acts of the respondents are in violation of the provisions of section 2(c) of the Clayton Act, as amended by the Robinson-Patman Act.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on March 27, 1957, charging them with having violated section 2(c) of the Clayton Act, as amended by the Robinson-Patman Act. Respondents appeared by counsel and entered into an agreement, dated October 7, 1957, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the director and the assistant director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with section 3.25 of the rules of practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said 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 said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order,

and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to sections 3.21 and 3.25 of the rules of practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondents Arnold Vogl, Edith Vogl, and Erna Fisher are individuals trading as copartners under the firm name and style of Riviera Packing Co., with their office and principal place of business located in the city of Eastport, State of Maine. Respondent Milbridge Canning Corp. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its plant and place of business located in the city of Milbridge, State of Maine, and its principal office is also located in the city of Eastport, State of Maine.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Clayton Act, as amended by the Robinson-Patman Act. This proceeding is in the public interest.

ORDER

It is ordered, That respondents Arnold Vogl, Edith Vogl, and Erna Fisher, individually and as copartners doing business under the name of Riviera Packing Co., or under any other name, and as officers and sole stockholders of Milbridge Canning Corp., and respondent Milbridge Canning Corp., a corporation, and its officers, representatives, agents, and 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, 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, an allowance or discount in lieu of brokerage, or any part or percentage thereof, by selling sardines or other food products to any such buyer at prices reflecting a reduction from the prices at which sales of such products are currently being effected by respondents 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 respondents to their brokers; or

2. Selling sardines or other food products direct to some buyers, without using brokers, at prices reflecting a reduction from the prices at which sales of such products are currently being effected by respondents to other buyers, 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 buyer, 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 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 18th day of December 1957, 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
HENRY FETTNER DOING BUSINESS AS FETTNER
FUR CO.

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

Docket 6828. Complaint, July 8, 1957—Decision, Dec. 18, 1957

Consent order requiring a furrier in Cincinnati, Ohio, to cease violating the Fur Products Labeling Act by removing from fur products the labels required to be affixed thereto, and by affixing to certain products labels stating falsely that they were composed of backs; by setting forth on invoices the names of animals other than those producing certain furs; by advertising which failed to disclose the names of animals producing certain furs, and that furs were artificially colored or composed of paws, waste fur, etc.; which misrepresented prices, and stated falsely that "all comparative prices have been registered with the Federal Trade Commission"; and by failing in other respects to comply with the labeling, invoicing, and advertising requirements of the law.

Mr. Michael J. Vitale and *Mr. Thomas A. Ziebarth* for the Commission.

Goodman & Goodman by Sol Goodman of Cincinnati, Ohio, for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Fur Products Labeling Act, and the rules and regulations promulgated thereunder, and the Federal Trade Commission Act, in connection with the advertising and sale of his fur products. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner