

Complaint

IN THE MATTER OF

JABIE S. HARDIN DOING BUSINESS AS JABIE
SALES CO.

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

Docket 6812. Complaint, June 3, 1957—Decision, Jan. 28, 1958

Consent order requiring a food broker in Memphis, Tenn., to cease collecting brokerage fees on food products sold to a corporate wholesale distributor of which he was president and virtually all of the stock of which he owned, and to its successor copartnership, of which he retained substantial control, which transactions had the same effect as if he were purchasing for his own account and receiving brokerage and were thus in violation of section 2(c) of the Robinson-Patman Act.

Mr. Frederick McManus for the Commission.

Arnall, Golden & Gregory, by *Mr. Ellis Arnall*, of Atlanta, Ga.,
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, since September 1, 1955, 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 in that respect as follows:

PARAGRAPH 1. Respondent Jabie S. Hardin, an individual, doing business as Jabie Sales Co., is now and has been since September 1, 1955, engaged in the conduct of a food brokerage business, which business is located at 1184 Airways Boulevard, Memphis, Tenn. Respondent Jabie S. Hardin represents numerous manufacturers and suppliers of food products located outside the State of Tennessee in the sale and distribution of food products within said State of Tennessee.

PAR. 2. Helen E. Hardin and N. E. Hardin, copartners trading under the firm name of Hardin's Co., are engaged in the wholesale distribution and sale of food products. Helen E. Hardin is the wife and N. E. Hardin is the brother of respondent, Jabie S. Hardin. The place of business of Hardin's Co., is located at 1186 Airways Boulevard, Memphis, Tenn., immediately adjacent to the place of business of Jabie Sales Co.

PAR. 3. Prior to the formation of the partnership trading as the Hardin's Co., the business was conducted under the name of Hardin's, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee. Hardin's, Inc., was located at 1186 Airways Boulevard, Memphis, Tenn., the present address of Hardin's Co. The president of Hardin's, Inc., was respondent Jabie S. Hardin with title to 4,740 shares of stock in the corporation. The vice president of Hardin's, Inc., was N. E. Hardin with title to 260 shares of stock in the corporation. Helen E. Hardin was secretary of the corporation and owned no stock therein. Hardin's, Inc., was a wholesale distributor engaged in the sale and distribution of food products to retailers for resale to the consuming public.

PAR. 4. On or about September 1, 1955, respondent Jabie S. Hardin transferred all of his stock in Hardin's, Inc., to his wife, Helen E. Hardin, who became president of the corporation which continued in the business of a wholesale distributor of food products until on or about September 30, 1955, at which time the corporation was dissolved and the copartnership of Helen E. Hardin and N. E. Hardin, doing business under the firm name of Hardin's Co., was formed to acquire and conduct the wholesale food distribution business formerly conducted under the corporate name of Hardin's, Inc.

PAR. 5. On or about September 1, 1955, respondent Jabie S. Hardin, doing business as Jabie Sales Co., commenced business as a food broker and in such capacity represented various principals located outside the State of Tennessee in sales of food products to Hardin's, Inc., and subsequent to the dissolution of that corporation and the formation of Hardin's Co. has sold and continues to sell food products in substantial amounts to Helen E. Hardin and N. E. Hardin, doing business as Hardin's Co. In his capacity as a broker of food products, respondent Jabie S. Hardin has collected and continues to collect substantial amounts as commissions or brokerage fees on sales of food products to Hardin's Co.

PAR. 6. Jabie S. Hardin, through his wife, Helen E. Hardin, continues substantial ownership of Hardin's Co. He also continues to exercise a substantial degree of authority and control over the business operation of that company, including its purchase and sales policies. As a result of this ownership and control the purchases of food products made by Hardin's Co. through Jabie Sales Co. is for the benefit of Jabie S. Hardin and is the same or has the same effect as if he were purchasing for his own account and receiving brokerage on said purchases.

PAR. 7. In the course and conduct of its business, as aforesaid, Hardin's Co., since September 30, 1955, has made and continues to make substantial purchases of food products from manufacturers and distributors thereof with places of business located in several states of the United States other than the State of Tennessee, and has directly or indirectly caused such food products so purchased to be transported from said states to Hardin's Co.'s place of business in Memphis, Tenn. There is now, and at all times mentioned herein has been, a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, in said food products across state lines between respondent and the sellers of said food products. Said food products are sold and distributed for use, consumption, or resale within the various States of the United States.

PAR. 8. The acts and practices of respondent since September 1, 1955, in receiving and accepting commissions, brokerage fees or other compensation, allowances or discounts in lieu thereof, on purchases of food products in commerce made directly or indirectly for his own account, as above alleged and described, is in violation of subsection (c) of section 2 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 respondent on June 3, 1957, charging him with having violated section 2(c) of the Clayton Act, as amended by the Robinson-Patman Act. Respondent appeared by counsel and entered into an agreement, dated November 14, 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.

Respondent, pursuant to the aforesaid agreement, has 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 respondent waives 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

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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 respondent that he has 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. Respondent is an individual doing business as Jabie Sales Co. under and by virtue of the laws of the State of Tennessee with his office and principal place of business located at 1184 Airways Boulevard, in the city of Memphis, State of Tennessee, but said respondent is now engaged in terminating said business for economic considerations.

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

ORDER

It is ordered, That respondent Jabie S. Hardin, individually and doing business as Jabie Sales Co., or under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the purchase of food products or other commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Receiving or accepting, directly or indirectly from any seller, anything of value as a commission, brokerage, or other compensation,

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or any allowance or discount in lieu thereof, upon or in connection with any purchase of food products for his own account, or for the account of any corporation, partnership, or firm in which respondent, directly or indirectly, owns an interest or exercises a substantial degree of authority and control.

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 28th day of January 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF
CUESTA, REY & CO. ET AL.

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

Docket 6855. Complaint, July 26, 1957—Decision, Jan. 28, 1958

Consent order requiring cigar manufacturers in Tampa, Fla., to cease placing on boxes of their cigars a "guarantee" stamp which so closely resembled the official Customs stamp in lettering, design, and placement on boxes that purchasers believed they were buying cigars made under bond.

Mr. Charles W. O'Connell for the Commission.

Mr. Norman S. Brown, of Brown, Brown & Corcoran, of Tampa, Fla., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that Cuesta, Rey & Co., a corporation, Angel L. Cuesta, Jr., Ygnacio D. Rey, Karl B. Cuesta, and Eugene Simon, individually and as officers of said corporation, hereinafter called respondents, have violated the provisions of the Federal Trade Commission Act by misrepresenting that the cigars which they manufacture are made in a customs bonded warehouse.

After issuance and service of the complaint, the respondents, their counsel and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of the matters complained about. The agreement has been approved by the director and assistant director of the Bureau of Litigation.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement; and the signing of 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.