

Complaint

54 F.T.C.

IN THE MATTER OF

AMERICAN PACKING COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(C) OF THE CLAYTON ACT*Docket 6904. Complaint, Oct. 7, 1957—Decision, Apr. 17, 1958*

Consent order requiring packers of canned salmon in Seattle, Wash.—making sales generally through both primary and subbrokers, each of whom received brokerage at the rate of $2\frac{1}{2}$ percent of the selling price—to cease violating sec. 2(c) of the Clayton Act by making sales direct to certain chain customers on which the price of the product was reduced by the approximate amount of brokerage normally paid, or 5 percent; by making sales to large chain customers where only one broker was used on which they allowed a lower price by approximately one-half the usual brokerage, or $2\frac{1}{2}$ percent; and by making numerous sales through buyers' own purchasing agents on which they allowed a discount in lieu of brokerage of $2\frac{1}{2}$ percent in the form of a lower price.

Mr. Cecil G. Miles and Mr. John J. McNally for the Commission.
Johnson, Dafoe & Jonson, by Mr. Carl A. Jonson and Mr. B. F. Reno, Jr., of Seattle, Wash., 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 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 American Packing Co., hereinafter sometimes referred to as American or as respondent corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington with its principal office and place of business located at 711 Second Avenue, Seattle, Wash. Since its incorporation in the spring of 1950 respondent corporation has been and is now engaged in packing, selling and distributing canned salmon. Its sales volume during the year 1955 was in excess of \$1 million.

PAR. 2. Respondents John J. Theodore and Karl V. Sjoblom are individuals and officers of respondent corporation with their principal office and place of business located at 711 Second Avenue, Seattle, Wash. Respondent Theodore is president and owns 49 percent of

the capital stock of the corporate respondent, while respondent Sjoblom is vice president and owns 51 percent of the corporate stock of said corporate respondent. As officers and owners, as described above, these individual respondents have exercised for sometime past and still exercise authority and control over the corporate respondent and its business activities, including the direction of its sales and distribution policies.

PAR. 3. Respondents, and each of them, for the past several years have sold and distributed their canned salmon in commerce to customers located in the several States of the United States, generally through both primary and field or subbrokers. The primary brokers are usually located in the State of Washington, but chiefly in the city of Seattle and vicinity. A number of these primary brokers employ field or subbrokers who are usually located in the various States where the customers, or buyers are located. These field or subbrokers generally assist the primary broker in locating and contacting said customers or buyers in connection with the sale of respondents' product. The primary broker is usually paid at the rate of 5 percent of the net selling price of the product, except where a field or subbroker is employed, and in those instances they each receive brokerage at the rate of 2½ percent of the net selling price of product sold.

In a substantial number of instances, however, respondents have made sales direct to certain chain customers without going through either a primary broker or a field broker, and on these sales the price of the product is reduced to these chain customers by the amount, or the approximate amount, of the brokerage normally paid to their brokers, or a reduction of approximately 5 percent. In other instances respondents make sales to large chain customers where only one broker is used—either the primary or the field broker—and in these instances respondents allow these chain customers a lower price by the approximate amount of one-half the usual brokerage normally paid, or a reduction of approximately 2½ percent. Still in other instances respondents make numerous and substantial sales to buyers through said buyers' own representatives or purchasing agents, and on these sales respondents grant or allow these customers a discount in lieu of brokerage by the approximate amount of 2½ percent in the form of lower price, or the approximate amount of brokerage usually paid when sales are made only through either a primary or a field broker.

PAR. 4. In the course and conduct of their business since 1950 respondents, and each of them, have sold and distributed and now sell and distribute their canned salmon in commerce as "commerce" is

defined in the aforesaid Clayton Act, to buyers located in the several States of the United States other than the State in which respondents are located. Said respondents transport or cause such canned salmon, when sold, to be transported from their place of business in the State of Washington to customers located in the various other States of the United States. There is and has been at all times mentioned herein a continuous course of trade in commerce in said canned salmon across State lines between respondents and the respective buyers of said product.

PAR. 5. In making payments of commissions, brokerage fees or discounts, or allowances in lieu thereof as alleged and described above, the respondents and each of them in the course and conduct of their business in commerce, as "commerce" is defined in the aforesaid Clayton Act, have paid, granted or allowed, and are now paying, granting or allowing, something of value as a commission, brokerage, or other compensation, or allowance or discount in lieu thereof, in connection with the sale of their canned salmon to buyers who were and are purchasing for their own account for resale, or to agents or intermediaries who were and are in fact acting for or in behalf of or who were and are subject to the direct or indirect control of said buyers.

PAR. 6. The acts and practices of the respondents as above alleged and described are in violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., title 15, sec. 13).

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on October 7, 1957, charging Respondents with paying, granting or allowing something of value as commission, brokerage or other compensation, or allowance or discount in lieu thereof, in connection with the sale of their canned salmon to buyers purchasing for their own account for resale, or to agents or intermediaries acting for or in behalf of, or subject to the direct or indirect control of, said buyers, in violation of section 2(c) of the Clayton Act as amended (U.S.C., title 15, sec. 13).

Thereafter, on February 11, 1958, respondents, their counsel, 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 of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent American Packing Co. as a Washington corporation, with its office and principal place of business located at 711 Second Avenue, Seattle, Wash.; respondents John J.

Theodore and Karl V. Sjoblom as individuals and as president and vice president, respectively, of the corporate respondent, and having the same address as the corporate respondent.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, 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; that the complaint herein may be used in construing the terms of said order; and that the 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.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the agreement containing consent order to cease and desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That American Packing Co., a corporation, and its officers; and John J. Theodore and Karl V. Sjoblom, individually and as officers of respondent corporation, and respondents' directors, agents or employees, directly or indirectly, or through any corporate, partnership, or other device, in connection with the sale of their seafood products, including canned salmon, 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, brokerage, or other compensation, or any allowance or discount in lieu

thereof, upon or in connection with any sale of their seafood 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 did, on the 17th day of April 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents American Packing Co., a corporation, and John J. Theodore and Karl V. Sjoblom, individually and as president and vice president, respectively, of American Packing Co., 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

QUEEN FISHERIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(c) OF THE CLAYTON ACT*Docket 6906. Complaint, Oct. 7, 1957—Decision, Apr. 17, 1958*

Consent order requiring a corporation engaged in selling canned salmon from its warehouse in Seattle, Wash., where it stored the product of the floating cannery it operated in Alaska waters, to cease paying illegal brokerage in violation of section 2(c) of the Clayton Act by reducing its prices by the approximate amount of the brokerage fees, or 5 percent on sales made to a large grocery chain through the chain's wholly owned subsidiary and buying agent.

Mr. Cecil G. Miles and Mr. John J. McNally for the Commission.

Mr. Erling H. Bendiksen, of Seattle, Wash., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are now violating the provisions of subsection (c) of section 2 of the Clayton Act (U.S.C., title 15, section 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 Queen Fisheries, Inc., hereinafter sometimes referred to as respondent Queen or as corporate respondent, is a corporation, organized, existing and doing business under and by virtue of the laws of the territory of Alaska with its principal office and place of business located at 607 Third Avenue, Seattle, Wash. Respondent Queen operates a floating cannery in Alaska waters where it cans the salmon caught during the season. At the end of said season it returns to Seattle where the canned salmon is stored in a warehouse known as Salmon Terminals from which it is sold and distributed by respondent Queen to its various customers located throughout the United States. Respondent Queen's volume of salmon sales approximates \$900,000 annually.

PAR. 2. Respondent Erling H. Bendiksen is an individual and is president and owner of all the capital stock of respondent Queen with his principal office located at 607 Third Avenue, Seattle, Wash. As president and owner of respondent Queen he has exercised for the past several years, and still exercises authority and control over the corporate respondent and its business operations, including the direction of its sales and distribution policies.