

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.

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From the same offices listed above respondent Bendicksen also operates as a sole proprietorship the firm of E. H. Bendicksen Co. which is engaged primarily in the sale and distribution of oysters. As owner and operator of both companies, respondent Bendicksen in many instances has made sales of salmon for respondent Queen but billed the customer on invoices headed "E. H. Bendicksen Company".

PAR. 3. Respondents, both corporate and individual, now sell and distribute, and 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. They sell and distribute their products through brokers to buyers and direct to buyers. When selling through brokers they pay the broker for his services a commission or brokerage fee of 5 percent of the net selling price of the merchandise sold. In a number of instances substantial sales have been and are now being made to a large grocery chain through the chain's wholly owned subsidiary and buying agent, and on these sales respondents' prices for their canned salmon have been and are being reduced by the approximate amount of the brokerage fees or commissions usually paid when making sales through their brokers.

PAR. 4. In the course and conduct of their business for the past several years, but more particularly since July 1, 1954, to the present time, respondents, both corporate and individual, 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 of Washington in which respondents are located. Said respondents, and each of them, 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 various other States of the United States. There 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 products.

PAR. 5. In making payments of commissions, brokerage fees, or discounts or allowances in lieu thereof as alleged and described above, the respondents, both corporate and individual, in the course and conduct of their business in commerce as hereinabove described have paid, granted or allowed, and are now paying, granting or allowing, something of value as a commission, brokerage or other compensation, or an allowance or discount in lieu thereof in connection with the sale and distribution 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 respondents, both corporate and individual, 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 and distribution 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, section 13).

Thereafter, on January 27, 1958, respondents 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 Queen Fisheries, Inc., as an Alaska corporation, with its office and principal place of business located at 607 Third Avenue, Seattle, Wash., and respondent Erling H. Bendiksen (erroneously spelled in the complaint as Erling H. Bendicksen) as an individual and as president and owner of all of the capital stock of respondent Queen Fisheries, Inc., with 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

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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 Queen Fisheries, Inc., a corporation, and its officers, and Erling H. Bendiksen, individually, and as an officer of respondent corporation, and respondents' officers, directors, agents, representatives or employees, directly or indirectly, or through any corporate, or other device, in connection with the sale of their seafood 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, 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 Queen Fisheries, Inc., a corporation, and Erling H. Bendiksen (erroneously spelled in the complaint as Erling H. Bendicksen), individually and as president of Queen Fisheries, Inc., 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
ALASKA TRANSPORTATION COMPANY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(c) OF THE CLAYTON ACT*Docket 6907. Complaint, Oct. 7, 1957—Decision, Apr. 17, 1958*

Consent order requiring canners of salmon and crab meat in Seattle, Wash., to cease paying illegal brokerage in violation of section 2(c) of the Clayton Act by reducing their prices to large grocery chains which bought direct or through their wholly owned subsidiaries or buying agents, by the 5 percent which would normally be paid for brokerage.

Mr. Cecil G. Miles and Mr. John J. McNally for the Commission. Graham, Green & Dunn, by Mr. James Wm. Johnston, 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, as amended (U.S.C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Alaska Transportation Co., is a corporation organized, existing and doing business under and by virtue of the laws of the Territory of Alaska, with its principal office located at 2101 Exchange Building, Seattle, Wash.

Respondent Pelican Cold Storage Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the Territory of Alaska, with its principal office located at Suite 427, Colman Building, Seattle, Wash.

Respondent Coastal Glacier Sea Foods, Inc., 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 Suite 427, Colman Building, Seattle, Wash.

Respondent Norton Clapp is an individual and is president and owner of a substantial majority of the capital stock of the above named three corporate respondents, with his principal office located at 2101 Exchange Building, Seattle, Wash.

Respondent Allan H. Link is an individual and is vice president and treasurer of corporate respondent Alaska Transportation Co., with his principal office located at Suite 427, Colman Building, Seattle, Wash.