

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.

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Respondent Prosper S. Ganty is an individual and is executive vice president of corporate respondent Pelican Cold Storage Co., with his principal office located at Suite 427, Colman Building, Seattle, Wash.

As officers and/or owners the individual respondents, acting for and through corporate respondents exercise authority and control over all of respondents' corporate and partnership business operations, including their sales and distribution policies.

PAR. 2. The respondents, both corporate and individual, have been for the past several years and are now engaged, among other things, in canning, packing, selling and distributing salmon and crabmeat through two partnerships doing business as the Pelican Packing Co. and the Pelican Sales Co. The former operates a cannery in Pelican, Alaska, where it cans and packs the salmon and crabmeat, after which the seafood is shipped to Seattle, Wash., where the latter company handles all sales and distribution thereof. Respondents' volume of sales of its salmon and crabmeat, hereinafter sometimes referred to as seafood products, amount to approximately \$1 million annually.

PAR. 3. Respondents and each of them sell and distribute their seafood products in commerce to customers located in the several States of the United States. Respondents sell and distribute said products to customers through brokers and to large chain customers direct, or through the chains' wholly owned subsidiaries or buying agents. When selling through brokers, respondents pay them for their services a commission or brokerage fee at the rate of 5 percent of the net selling price of the merchandise sold. When selling direct to the large grocery chains, or through the chains' wholly owned subsidiaries or buying agents, respondents' prices for their seafood products have been and are now being reduced to these chains by the approximate amount of the brokerage fees or commissions usually paid by respondents when making sales through their brokers.

PAR. 4. In the course and conduct of their business in commerce for the past few years, but more particularly since 1955 to the present time, respondents, and each of them, have sold and distributed and now sell and distribute their seafood products 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 seafood products 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 seafood products across State lines between respondents, and each of them, and the respective buyers of said products.

PAR. 5. In making payments of commissions, brokerage fees or discounts or allowances in lieu thereof to customers purchasing direct as alleged and described above respondents and each of them 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 seafood products to direct 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, and each of them, as above alleged and described are in violation of subsection (c) of section 2 of the Clayton Act, as amended (U.S.C., Title 15, sec. 13).

INITIAL DECISION BY ARNER 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 seafood products to direct 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 Alaska Transportation Co., a corporation, and as copartner doing business as Pelican Packing Co. and Pelican Sales Co.; Pelican Cold Storage Co., a corporation, and as copartner doing business as Pelican Packing Co.; Coastal Glacier Sea Foods, Inc., a corporation, and as copartner doing business as Pelican Sales Co., all by respondent Norton Clapp, as president thereof; respondent Prosper S. Ganty, individually and as an officer of Pelican Cold Storage Co.; their counsel, and counsel supporting the complaint herein, 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 respondents as follows:

Respondent Alaska Transportation Co. as an Alaska corporation, with its office and principal place of business located at 2101 Exchange Building, Seattle, Wash.; also as a copartner doing business as Pelican Packing Co. and Pelican Sales Co., with offices located at Suite 427, Colman Building, Seattle, Wash.;

Respondent Pelican Cold Storage Co. as an Alaska corporation, with its office and principal place of business located at suite 427, Colman Building, Seattle, Wash.; also as a copartner doing business as Pelican Packing Co., with offices at the same address;

Respondent Coastal Glacier Sea Foods, Inc., as an Alaska corporation, with its office and principal place of business located at Suite 427, Colman Building, Seattle Wash; also as a copartner doing business as Pelican Sales Co., with offices at the same address;

Respondent Norton Clapp as an individual and as president of the three corporate respondents above named, with his office and principal place of business located at 2101 Exchange Building, Seattle, Wash.;

Respondent Allan H. Link as an individual and as vice president and treasurer of respondent Alaska Transportation Co., with his office and principal place of business at 1501 Exchange Building, Seattle, Wash.;

Respondent Prosper S. Ganty as an individual and as executive vice president of corporate respondent Pelican Cold Storage Co., with his office and principal place of business located at suite 427, Colman Building, Seattle, Wash., who, in his official and individual capacities, exercises substantial authority and control over all of respondents' seafood business operations, including their sales and distribution policies.

The agreement states that individual respondents Norton Clapp and Allan H. Link have, for some time past, delegated all authority and control over all of the respondents' corporate and partnership seafood business operations, including their sales and distribution policies, to individual respondent Prosper S. Ganty, and do not and for the period of time material to this proceeding have not, exercised such authority or control; in support of which statement, separate affidavits executed by respondents Norton Clapp and Allan H. Link are attached to and incorporated in the agreement as exhibits "A" and "B". All parties agree that for the reasons set forth in these affidavits, the complaint herein should be dismissed as to respondents Norton Clapp and Allan H. Link.

Respondents signatory to the agreement 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.

Said 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 the respondents that they have violated the law as alleged in the complaint.

Upon consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner observes that the agreement specifies the dismissal of the complaint herein as to respondents Clapp and Link, for the reasons above stated, but, simultaneously, the order contained in the agreement is directed against respondent "Prosper S. Ganty, individually and as executive vice president of respondent Pelican Cold Storage Co.; and all of respondents' other officers", which includes respondents Clapp and Link in their stated official capacities. The hearing examiner believes that this apparent contradiction was unintentional, and that the parties to the agreement intended that the complaint herein should be dismissed as to respondents Clapp and Link as individuals, but not as officers of the respondent corporations; and the provisions of the agreement and order are so interpreted. In consonance with this interpretation, the hearing examiner modifies the order to cease and desist by including therein respondents Clapp and Link specifically in their official capacity only, and by adding to the order of dismissal the one word "individually," thus obviating the apparent inconsistency; and, with such modification, 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,

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It is ordered, That Alaska Transportation Co., a corporation; Pelican Cold Storage Co., a corporation; Coastal Glacier Sea Foods, Inc., a corporation, and as copartners doing business as Pelican Packing Co., and Pelican Sales Co.; Norton Clapp and Allan H. Link, as officers of the above named corporations; Prosper S. Ganty, individually and as executive vice president of Respondent Pelican Cold Storage Co.; and all of respondents' other officers, directors, agents, representatives 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 and crabmeat, 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.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondents Norton Clapp and Allan H. Link, individually.

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 Alaska Transportation Co., a corporation, and as copartner doing business as Pelican Packing Co., and Pelican Sales Co.; Pelican Cold Storage Co., a corporation and as copartner, doing business as Pelican Packing Co.; Coastal Glacier Sea Foods, Inc., a corporation, and as copartner doing business as Pelican Sales Co.; Norton Clapp and Allan H. Link, as officers of the above named corporations; and Prosper S. Ganty, individually and as an officer of the above named corporations, 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
KATTEN & MARENGO, INC., ET AL.

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

Docket 6958. Complaint, Nov. 25, 1957—Decision, Apr. 17, 1958

Consent order requiring a department store in Stockton, Calif., and the furrier leasing the store's fur department, to cease violating the Fur Products Labeling Act by removing or mutilating labels required to be affixed to fur products; by labeling which set forth the name of an animal other than that producing a particular fur; by labeling and invoicing which failed to set forth information as required; and by advertising which failed to disclose that certain fur products were artificially colored.

Mr. John J. McNally for the Commission.

Respondents, of Stockton, Calif., for themselves.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 25, 1957, charging respondents with misbranding and falsely and deceptively invoicing and advertising certain of their fur products, in violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

Thereafter, on February 6, 1958, respondents and counsel supporting the complaint herein 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 Katten & Marengo, Inc., as a California corporation, operating a retail department store in Stockton, Calif., under the name Katten & Marengo, Uptown; respondent Freeman Fine Furs, Inc., as a California corporation which leases the fur department in said department store; and respondent Samuel Freeman as an individual who is president of the corporate respondent, Freeman Fine Furs, Inc.; all respondents having their office and principal place of business at 500 East Main Street, Stockton, Calif.

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 or con-