

Complaint

IN THE MATTER OF

FARWEST FISHERMAN, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2 (c) OF THE CLAYTON ACT*Docket 6905. Complaint, Oct. 7, 1957—Decision, Apr. 19, 1958*

Consent order requiring a packer of canned salmon and other seafood in Anacortes, Wash.—making sales generally through both primary and field brokers, each of whom received brokerage at the rate of 2½ percent of the selling price—to cease paying illegal brokerage in violation of section 2(c) of the Clayton Act by (1) granting a reduction of 2½ percent of the price to certain buyers when either a primary or a field broker was not used; (2) selling through primary brokers at a net price below that shown by the broker, who absorbed the difference out of brokerage; and (3) granting reductions in price in transactions where either the primary or the field broker took a reduction in brokerage.

Mr. Cecil G. Miles and Mr. John J. McNally for the Commission. Bogle, Bogle & Gates, by Mr. Robert W. Graham, 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 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 Farwest Fishermen, Inc., hereinafter sometimes referred to 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 Anacortes, Wash. For several years respondent corporation has been, and is now, engaged in packing, selling and distributing canned salmon, tuna, and other seafood products. Its mailing address is Post Office Box 111, Anacortes, Wash.

PAR. 2. Respondent Sam Rubenstein, hereinafter sometimes referred to as individual respondent, is president of, and owns a controlling interest in, respondent corporation. As an officer and as an owner of respondent corporation said individual respondent has exercised, and at the present time is exercising, authority and control

over the said corporate respondent and its business activities; including the direction of its sales and distribution policies. The business address of individual respondent is 1455 Northlake Place, Seattle, Wash.

PAR. 3. In the course and conduct of their business respondents have sold and distributed and now sell and distribute their canned salmon and other food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, to purchasers for resale located in the several States of the United States other than the State in which respondents are located. Respondents transport, or cause such products when sold to be transported, from their place of business in the State of Washington, to purchasers thereof 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 products across State lines by the respondents to the respective purchasers of said products.

PAR. 4. Respondents, for the past several years, have generally sold and distributed their said products through primary brokers located in Seattle, Wash. Said primary brokers frequently utilize the services of secondary or field brokers located in various marketing areas, in arranging for the sale and distribution of respondents' products. The brokerage commission deducted by the primary brokers utilized by respondents is customarily 5 percent of the net selling price. The field brokers are customarily compensated for their services by receiving $2\frac{1}{2}$ percent of the net selling price from the primary brokers.

PAR. 5. In the course and conduct of their business as packers, sellers, and distributors of canned salmon and other seafood products in commerce, respondents in many instances have made payments, grants, allowances, or discounts by various means and in substantial amounts in lieu of brokerage to certain purchasers of their said products; these being large retail chainstores in the main.

Among and including, but not necessarily limited to, the methods or means employed by respondents in so doing were the following:

(a) Granting to certain buyers deductions from price by way of allowances, discounts, or rebates in the approximate amount of $2\frac{1}{2}$ percent of the net price in transactions wherein either a primary broker or a field broker was not utilized.

(b) Selling, through primary brokers, to certain buyers at a net price below that accounted for by the primary broker to respondents; the difference being absorbed by the primary broker out of brokerage.

(c) Granting to certain buyers direct or indirect reductions in price in transactions wherein primary brokers or field brokers took a reduction in brokerage earnings.

PAR. 6. In making payments of commissions, brokerage fees, rebates, or discounts, or allowances in lieu thereof, as alleged and described above, respondents, 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 said products 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. 7. The acts and practices of 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 and other food products 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 January 23, 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 Farwest Fishermen, Inc., as a Washington corporation, with its office and principal place of business located in Anacortes, Wash., its mailing address being Post Office Box 111, Anacortes, Wash.; and respondent Sam Rubenstein as an individual and as president of the corporate respondent, with his office and principal place of business located at 1455 Northlake Place, Seattle, Wash.

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 Farwest Fishermen, Inc., a corporation, or its successor, and its officers; and Sam Rubenstein, individually and as president of said corporation, and respondents' 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, 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.

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Decision

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 19th day of April 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Farwest Fishermen, Inc., a corporation, and Sam Rubenstein, individually and as President of said corporation, 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.

IN THE MATTER OF
ELLIOT KNITWEAR, INC., ET AL.

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

Docket 6637. Complaint, Sept. 17, 1956—Decision, April 25, 1958

Order requiring importers in New York City to cease violating the Wool Products Labeling Act by using the word "Cashmora" on tags, etc., on sweaters containing no cashmere fibers. *

Mr. S. F. House supporting the complaint.

Goldstein, Golenbock & Barell, by *Mr. Martin C. Barell* and *Mr. Jack Verschleiser*, of New York, N. Y., for respondents.

Before: *John Lewis*, hearing examiner.

INITIAL DECISION AS TO BALANCE OF PROCEEDING

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on September 17, 1956, charging them with having violated the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and the Federal Trade Commission Act, through various acts of misbranding wool products, including (1) labeling as "Pure Cashmere" sweaters containing a substantial quantity of fiber other than cashmere; (2) failing to show the name or the registration number of the manufacturer or other appropriate person on stamps, tags, or labels; (3) using the word "Angora," which is not the common generic name of the fiber referred to; (4) failing to indicate on labels and tags attached to sweaters that they were not manufactured by respondents; and (5) using the word "Cashmora" on labels attached to sweaters which contain no cashmere fiber. After being served with said complaint, respondents appeared by counsel and subsequently entered into an agreement containing a consent order to cease and desist, dated April 15, 1957, purporting to dispose of all of the issues in the proceeding as to all parties, except for the allegation of misbranding arising out of the use of the word "Cashmora." Said agreement was thereafter submitted to the undersigned who filed an initial decision on May 17, 1957, containing an order to cease and desist disposing of all

*Other allegations of the complaint were settled by consent order on June 25, 1957 (53 F.T.C. 1185).