

IN THE MATTER OF

PACIFIC AMERICAN FISHERIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(c) OF THE CLAYTON ACT*Docket 6942. Complaint, Nov. 18, 1957—Decision, June 12, 1958*

Consent order requiring a packer of canned salmon and other sea food products and its corporate sales agent in Bellingham, Wash., to cease discriminating in price in violation of section 2(c) of the Clayton Act by making direct sales to certain favored customers at prices lower than those paid by buyers purchasing through brokers, the reduced prices reflecting in whole or in part the brokerage paid on the sales to the nonfavored customers.

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

Kerr, McCord, Greenleaf & Moen, by *Mr. R. A. Moen* and *Mr. Howard L. Scott*, 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, as amended hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent Pacific American Fisheries, Inc., hereinafter sometimes referred to as Pacific American, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 401 Harris Avenue, Bellingham, Wash.

Respondent Deming & Gould Co., hereinafter sometimes referred to as Deming & Gould, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business also located at 401 Harris Avenue, Bellingham, Wash. Respondent Deming & Gould is a wholly owned subsidiary of respondent Pacific American and operates as its sales agent.

PAR. 2. Respondent Pacific American is now, and for the past several years has been, engaged in the business of packing and distributing canned salmon and other seafood products, hereinafter sometimes referred to as seafood products to buyers located throughout the United States. Sales of its seafood products are generally made by its sales subsidiary, respondent Deming & Gould, through brokers located in the various marketing areas in which the buyers are located.

However, Pacific American either directly or through its wholly owned sales subsidiary, Deming & Gould, has made and continues to make numerous and substantial sales direct to certain favored buyers, principally large retail chains, without utilizing the services of brokers in the particular transactions. When respondent utilizes the services of brokers, said brokers are compensated for their services at the rate of 2½ percent of the net selling price of the merchandise.

Respondent Deming & Gould is now, and for the past several years has been, engaged in business as sales agent for respondent Pacific American, selling and distributing its seafood products to buyers located throughout the United States. Respondent Deming & Gould generally sells and distributes said seafood products through brokers located in the various marketing areas of the United States in which the buyers are located. However it does sell said seafood products to certain favored buyers, principally large chains or large buying groups, without utilizing the services of brokers. This type of selling is done with the knowledge, consent and authority of respondent Pacific American. When selling through brokers respondent usually compensates them for their services in making the sale at the rate of 2½ percent of the net selling price of the merchandise.

PAR. 3. These respondents are substantial factors in the sale and distribution of canned seafood, particularly canned salmon, and sell and distribute such seafood products to buyers throughout the United States. In the course and conduct of their business, as aforesaid, respondents and each of them, directly or indirectly, have shipped or transported said seafood products, or caused the same when sold to be shipped or transported, from the canning plants or warehouses of respondents to buyers located in the various states of the United States other than the state or territory of origin of such shipments. Thus, the respondents are now, and for the past several years have been, engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended.

PAR. 4. In the course and conduct of their business of selling and distributing canned seafood in commerce as aforesaid, the respondents and each of them, have made direct sales thereof to certain favored buyers at prices lower than those paid by buyers purchasing through respondents' brokers. These reduced prices to the favored buyers buying directly from respondents reflect either in whole or in part the customary and usual brokerage paid to brokers for their services in making sales to respondents' non-favored customers.

Thus respondents, and each of them, in the course and conduct of their business as hereinabove described have paid, granted or allowed,

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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 seafood, to buyers who were and are purchasing for their own account for resale, or to agents or intermediaries who were and are acting for or in behalf of, or who were and are subject to the direct or indirect control of said buyers.

PAR. 5. The acts and practices of respondents as hereinbefore alleged and described constitute a violation of the provisions of subsection (c) of section 2 of the Clayton Act as amended.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 18, 1957, charging respondents with violation of the provisions of section 2(c) of the Clayton Act, as amended, by paying, granting, or allowing something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, to buyers purchasing respondents' canned seafood for their own account for resale, or to agents or intermediaries acting for or in behalf of said buyers or subject to the direct or indirect control thereof.

Thereafter, on April 11, 1958, respondents, 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 an Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondents Pacific American Fisheries, Inc. and Deming & Gould Co. as Delaware corporations, with their offices and principal places of business located at the same address, to wit, 401 Harris Avenue, Bellingham, 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

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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.

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 Pacific American Fisheries, Inc., a corporation, and Deming & Gould Co., a corporation, and Respondents' officers, directors, agents, representatives or employees, directly 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 shall, on the 12th day of June 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Pacific American Fisheries, Inc., a corporation, and Deming & Gould Co., a 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
MERCANTILE STORES CO., INC., ET AL.

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

Docket 6999. Complaint, Dec. 18, 1957—Decision, June 12, 1958

Consent order requiring a furrier in Seattle, Wash., and its parent corporation to cease violating the advertising, invoicing, and labeling requirements of the Fur Products Labeling Act.

Mr. John J. McNally, Jr., supporting the complaint.

Mr. Clarence U. Carruth, Jr., of the firm of *Curtis, Mollet-Prevost, Colt & Mosle* of New York, N.Y., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 18, 1957, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by misbranding, falsely invoicing, and falsely advertising certain fur products. After being served with the complaint respondents entered into an agreement dated March 12, 1958, 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 Assistant Director and the 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.

Respondents, pursuant to the aforesaid agreement have 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 respondents waive 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 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