be, and they hereby are, reversed.

It is further ordered, That said exhibits be, and they hereby are, received in evidence.

GIANT FOOD SHOPPING CENTER, INC.

Docket 6459. Order and Opinion, Dec. 19, 1957

Order vacating initial decision dismissing complaint for lack of jurisdiction—respondent operator of a supermarket chain claiming to be a "packer" within the meaning of the Packers and Stockyards Act—and remanding case to hearing examiner.

OPINION OF THE COMMISSION

By KERN, Commissioner:

Respondent was charged with violating section 5 of the Federal Trade Commission Act through, among other things, inducing payments of discriminatory advertising allowances by suppliers of its merchandise, which allowances it knew or should have known to be discriminatory. In the course of the hearings, respondent moved for dismissal of the complaint on the ground that it is a packer within the meaning of the Packers and Stockyards Act of 1921,[1] and that the acts and practices to which the charges related are within the exclusive jurisdiction of the Secretary of Agriculture. The hearing examiner granted the motion and filed an initial decision dismissing the proceeding. Counsel supporting the complaint have appealed.

Since 1936 respondent has operated a chain of supermarkets for retailing food—including meat, poultry, and dairy products—and household articles. After this proceeding was commenced and im-

[1] 42 Stat. 160; 7 U.S.C. 191, et seq.

mediately before filing its motion to dismiss, respondent registered as a packer with the U.S. Department of Agriculture. According to its moving papers, respondent buys from its suppliers slaughtered carcasses of various animals, including steers, calves, and lambs. It receives its beef and veal as quarter- and half-carcasses, respectively, and the lamb in whole carcasses. Upon delivery these meats are cut and trimmed by butchers in the individual stores into steaks, roasts, and chops for display and sale over the counter. The butchers also make meat loaf and country sausage. The meat loaf is prepared by grinding predetermined quantities of beef, pork, and veal and adding spices; the sausage is composed of ground pork loins and spices.

Section 202 of the Packers and Stockyards Act [2] proscribes use by any packer of unfair or discriminatory practices or other acts there specified. Section 406(b) [3] provides, with exceptions not here material, that as long as that act remains in effect, the Federal Trade Commission "shall have no power or jurisdiction" relating to "any matter" made subject by the act to the jurisdiction of the Secretary of Agriculture. Section 2(a)(3),[4] defines the term "meat food products" as "all products and byproducts of the slaughtering and meat-packing industry—if edible." Of the various definitions of the term "packer" contained in section 201 of the act,[5] the one here relevant reads:

The term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce * * *.

On the basis of his interpretation of the foregoing, the hearing examiner concluded that the respondent's cutting and boning of its purchased meats for resale, together with the grinding of hamburger meat, did not render respondent a packer within the meaning of the act. He concluded, however, that the processing activities incident to the sale of meat loaf and sausage did constitute the manufacture or preparation of meat food products which are separate and distinct from meat alone and that the respondent must accordingly be regarded as a packer within the meaning of the act and hence subject to the Secretary's exclusive jurisdiction.

We concur in the hearing examiner's conclusion that the preparation of meats as roasts, hamburger, and other cuts does not suffice

[2] 42 Stat. 161; 49 Stat. 649; 7 U.S.C. 192
[3] 42 Stat. 169; 7 U.S.C. 227.
[4] 42 Stat. 159; 7 U.S.C. 182.
[5] 42 Stat. 160; 7 U.S.C. 191.

under the statute to constitute a meat-packing enterprise. We disagree with his conclusion that by making some of its meat into meat loaf and sausage respondent became a packer under the act.

The hearing examiner's conclusion that respondent's grinding and seasoning of some of its meats transform the legal identity of such meats under the act from "meat" to "meat food products" is plainly erroneous. As we have previously noted, the act defines "meat food products" as edible products and edible byproducts of the slaughtering and meatpacking industry. Edible meat, accordingly, is a meat food product within the meaning of the act. Hence, the meats which respondent elects to grind and season already are meat food products at the very time they are received by respondent, and they remain such when offered at retail as meat loaf and country sausage. Respondent does no more than engage in the activities which are customary in the retail merchandising of meat; these activities do not of themselves constitute the manufacture and preparation of meat or meat food products for sale or shipment in commerce within the purview of the act.

After the hearing examiner filed his initial decision, we held in the matter of *Crosse & Blackwell Co.*, docket No. 6463 (decided November 13, 1957), that the preparation of soups or other table foods containing meat purchased by the processor from a local slaughterhouse did not, under the act, confer upon the processor the status of packer. And we noted that through this legislation Congress was seeking to regulate the practices of the business concerns (and their financial affiliates) which composed the slaughtering and meatpacking industry. The law was aimed at controlling the packer *as Congress knew him*, and the legislative target was the large concern engaged in purchasing animals, slaughtering them, selling food products and processing the byproducts to greater or lesser degree. This congressional intent appears plainly in the previously noted definition of "meat food products." That definition does not purport to include every article of food derived or prepared in part from edible portions of cattle or other livestock. To the contrary, it is confined to edible products and edible byproducts of "the slaughtering and meat-packing industry." This language thus logically excludes from the category of articles to which the act applies those which are manufactured or prepared by persons not members of the slaughtering and meatpacking industry.

Of the 36 supermarkets operated by respondent, 14 are located in the District of Columbia. According to the definition of "commerce" in the statute, respondent's sales to the public throughout the latter

stores are sales "in commerce," that is, interstate commerce. However, neither this aspect of respondent's operations nor its recent registration with the Department can govern our determination of its status under the Packers and Stockyards Act. Respondent buys no livestock in commerce for purposes of slaughtering. There has been no showing that it owns or controls any interest in a packing establishment or that any substantial stock interest in respondent is held by a member of the slaughtering and meatpacking industry. Furthermore, respondent's processing operations are essentially limited to point-of-sale preparation and over-the-counter sale of its meat loaf and country sausage—ordinary and usual in the retailing of meat. It clearly is not a member of the industry group whose practices Congress sought to regulate—the slaughtering and meatpacking industry. To hold otherwise would make a "packer" out of almost every food retailer in the District of Columbia. That respondent itself senses the fallacy of such a position is, we think, evidenced by its belated registration as a "packer," as noted earlier.

The facts here differ materially from those under consideration in the matter of *Food Fair Stores, Inc.*, docket No. 6458 (decided September 27, 1957), where the respondent operated a meatpacking plant and engaged in the preparation of meats which it resold both to independent jobbers and through its own stores.

The appeal of counsel supporting the complaint is accordingly granted. The initial decision will be vacated and the case remanded for further proceedings consistent herewith.

ORDER VACATING INITIAL DECISION AND REMANDING CASE TO HEARING EXAMINER

This matter having come on for hearing upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision granting the motion of the respondent to dismiss the complaint for lack of jurisdiction; and

The Commission, for reasons stated in the accompanying opinion, having determined that the hearing examiner was in error in granting said motion:

It is ordered, That the initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That this case be remanded to the hearing examiner for further proceedings in accordance with the Commission's opinion.

COLUMBUS COATED FABRICS CORP., ET AL.

Docket 6677. Order and Opinion, Dec. 23, 1957

Interlocutory order upholding hearing examiner's rulings limiting request for production of certain statements of witnesses, quashing certain specifications in subpenas, and denying motion to strike testimony of witness; and denying request for oral argument.

OPINION OF THE COMMISSION

By the COMMISSION:

This matter is before the Commission upon the interlocutory appeal of respondent Philan, Inc., from several rulings of the hearing examiner made in the course of hearings conducted in New York City from September 9 through September 12, 1957, as follows:

(1) Ruling of September 9, 1957, which, in response to Philan's motion in part requesting an order to require counsel supporting the complaint to produce for examination documents in his possession containing statements of certain named witnesses "to any investigator or other representative of the Federal Trade Commission prior to their testimony in this proceeding," ordered the production of only certain interview report documents with some deletions;

(2) Ruling of September 10, 1957, quashing certain specifications in two subpoenas duces tecum served upon Oscar Siperstein; and

(3) Ruling of September 12, 1957, denying Philan's motion to strike the testimony of Oscar Siperstein.

In connection with the ruling granting limited examination of certain documents in possession of counsel supporting the complaint, Philan argues first that, while the examiner ordered the turning over of interview reports with certain witnesses, he did not order the turning over of other prior statements of the *same witnesses* in forms other than interview reports. The hearing examiner considered the motion as "sort of a blunderbuss motion" and refused to grant the request to the extent that examination, direct or cross, brought out no indication of any report, statement, or interview of a witness. The result was to confine the requested production to interview reports only, and, in addition, to only the reports of this kind relating to the several witnesses in which cases it was apparent from the testimony that such reports were in existence; excluded were reports relating to other witnesses, as well as other prior statements of any of the witnesses. In other words, the request which involved an excursion to see what documentary material, if any, might be uncovered was limited to reasonable dimensions; it was limited to those documents immediately related to the testimony of the witnesses. Under the circumstances,