

Complaint

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IN THE MATTER OF
GAVIN BROS., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(C) OF THE CLAYTON ACT

Docket 6978. Complaint, Dec. 12, 1957—Decision, July 3, 1958

Consent order requiring a Seattle broker of canned salmon and other sea food to cease making allowances in lieu of brokerage to certain buyers in violation of Section 2(c) of the Clayton Act by such practices as (1) selling at net prices lower than those accounted for to its packer-principals; (2) granting price reductions, a part or all of which were not charged back to the packers; and (3) taking reduced brokerage on sales which involved price concessions.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and herein-after more particularly designated and described, have violated and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 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 Gavin Bros., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington. Respondent T. Jay Gavin is president of said corporation and formulates, directs and controls the acts, practices and policies of the said corporate respondent. The principal office and place of business of said corporate and individual respondents is located at 1500 Westlake Avenue North, Seattle, Wash.

PAR. 2. Respondents are now, and for many years prior hereto have been, engaged in the business of distributing food products including canned salmon. Respondents distribute as primary brokers, negotiating sales for the account of a number of packers located in various areas within and beyond the continental United States, including the Puget Sound and Columbia River areas, and the Territory of Alaska.

PAR. 3. Respondents are a substantial factor in the sale and distribution of canned salmon in the United States, and sell and distribute such food products generally through secondary or field brokers in various marketing areas, to buyers for resale located

throughout the United States. Respondents have directly or indirectly caused such food products, when sold, to be transported from the canning plants of the respective packers thereof, or from their warehouses, to buyers thereof located in various States of the United States other than the State or Territory of origin of such food products. Thus respondents are, and have been for many years prior hereto, engaged in a continuous course of trade and commerce, as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 4. Respondents are usually compensated for their services in arranging for the sale and distribution of such food products by deducting a brokerage commission from the proceeds in their account of sale to their packer-principals. Said account of sale also itemizes various discounts and allowances granted to the purchaser, such as for dents and swells, cash, or for labeling, all of which are shown as deductions from the purchase price and are charged back to the packer-principals in the usual course of business. The brokerage commission deducted by respondents is customarily 5% of the net selling price. The field brokers are customarily compensated for their services by receiving from respondents as primary brokers, a brokerage commission in the amount of $2\frac{1}{2}\%$ of the net selling price.

PAR. 5. Respondents, in the course and conduct of their business in commerce as primary brokers for various packer-principals, have made grants or allowances in substantial amount in lieu of brokerage to certain buyers of said canned salmon by affording differentials or concessions in price and various rebates and allowances, a part or all of which were not charged back to the various packer-principals but were, on the contrary, taken from all or a portion of the brokerage earnings of respondents and of their field brokers.

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

(a) Selling to certain buyers at net prices which were less than those accounted for to the packer-principals.

(b) Granting to certain buyers deductions from price by way of allowances or rebates, a part or all of which were not charged back to the packer-principals.

(c) Taking reduced brokerage on sales which involved price concessions to certain buyers.

PAR. 6. The acts and practices of respondents, as herein

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alleged, constitute violations of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Cecil G. Miles and *Mr. John J. McNally* supporting the complaint.

Mr. Clay Nixon, of Seattle, Wash., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The complaint herein was issued on December 12, 1957, charging respondents with the violation of Section 2(c) of the Clayton Act as amended by the Robinson-Patman Act in connection with the sale of seafood products.

After being served with the complaint, respondents entered into an agreement dated April 11, 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 duly made 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 said 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, that said order to cease and desist 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, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the

consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Gavin Bros., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1500 Westlake Avenue North, Seattle, Wash. Respondent T. Jay Gavin is an individual and an officer in respondent corporation, his address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Clayton Act, as amended by the Robinson-Patman Act. This proceeding is in the interest of the public.

ORDER

It is ordered, That Gavin Bros., Inc., a corporation, and its officers and directors, and T. Jay Gavin, individually and as an officer of said respondent corporation, and respondents' agents, representatives, or employees, directly or indirectly, or through any corporate or other device, in connection with the sale of seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying, granting, or passing on, either directly or indirectly, to any buyer or to anyone acting for or in behalf of or subject to the direct or indirect control of such buyer, brokerage earned or received by respondents on sales made for their packer-principals, by allowing to buyers lower prices which reflect all or any part of such brokerage, or by granting them allowances or rebates which are in lieu of such brokerage, or by any other method or means.

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 3d day of

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July 1958, become the decision of the Commission; and, accordingly,

It is ordered, That the respondents herein 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.

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IN THE MATTER OF
WALTER P. SHIEL & CO. ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(C) OF THE CLAYTON ACT.*Docket 6979. Complaint, Dec. 12, 1957—Decision, July 3, 1958*

Consent order requiring Seattle brokers of canned salmon and other sea food products to cease making allowances in lieu of brokerage in violation of Section 2(c) of the Clayton Act, by such practices as (1) granting various discounts and rebates to certain purchasers which were not charged back to the packer-principals but were taken from respondents' brokerage; and (2) granting discounts and rebates through deduction of 2½ percent instead of the customary 5 percent brokerage in their settlement with their packer-principals.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 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 Walter P. Shiel & Co., hereinafter referred to as corporate respondent, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its offices and principal place of business located at 5506 White-Henry-Stuart Building, Seattle, Wash.

Respondent Walter P. Shiel is president; respondents Lawrence C. Calvert and Starr H. Calvert are vice presidents; and respondent William Calvert is secretary-treasurer, respectively, of corporate respondent, and their place of business is the same as that of corporate respondent. Said individual respondents, in conjunction with each other in their capacities as officers of corporate respondent, as aforesaid, and as individuals, control, direct, and, formulate the affairs and policies of the corporate respondent.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the business of distributing canned salmon and other food products as primary brokers negotiating sales for the accounts of a number of packers located in various areas within and beyond the continental United States, including the

Puget Sound and Columbia River areas, and the Territory of Alaska.

PAR. 3. Respondents are a substantial factor in the sale and distribution of canned salmon in the United States, and sell and distribute such food products directly, and through secondary or field brokers in various marketing areas, to buyers for resale located throughout the United States. Respondents have directly or indirectly caused such food products when sold to be transported from the canning plants of the respective packers thereof, or from their warehouses, to buyers thereof located in various states of the United States other than the state or territory of origin of such shipments. Thus respondents are, and for several years last past have been, engaged in a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 4. Respondents are usually compensated for their services in negotiating sales of canned salmon for the accounts of their various packer-principals by deducting a brokerage commission from the proceeds in their accounts of sale to such principals. The said accounts of sale also itemize various discounts and allowances granted to the purchaser, such as for dents and swells, cash, or for labeling, all of which are shown as deductions from the selling price, and are charged back to the packer-principal in the usual course of business. The brokerage commission deducted by respondents, except in certain transactions wherein field brokers were not utilized, is customarily five percent of the net selling price. The field brokers are customarily compensated for their services by receiving from respondents as primary brokers, a brokerage commission in the amount of $2\frac{1}{2}\%$ of the net selling price. The direct sales negotiated by respondents without the services of a field broker are to relatively large-volume purchasers such as chain store organizations, in the main.

PAR. 5. In the course and conduct of their business as primary brokers of canned salmon in commerce, respondents have made grants or allowances in substantial amount in lieu of brokerage, generally to large-volume purchasers who dealt directly with respondents and not through field brokers. Among and including, but not necessarily limited to, the means and methods employed by respondents in so doing were the following:

(a) Respondents have granted and allowed various discounts and rebates to certain of said purchasers which were not charged

back to the various packer-principals but, on the contrary, were taken from respondents' brokerage.

(b) Respondents have granted and allowed various discounts and rebates to certain of said purchasers which, while ostensibly charged back to the packer-principals, were ultimately borne by respondents by virtue of their deduction of but 2½ percent of the net purchase price as brokerage (instead of the customary 5 percent on sales made through field brokers) in their settlement with such packer-principals.

PAR. 6. The acts and practices of respondents as herein alleged constitute violations of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Cecil G. Miles and *Mr. John J. McNally* supporting the complaint.

Mr. James W. Johnston of the firm of *Graham, Green & Dunn* of Seattle, Wash., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The complaint herein was issued on December 12, 1957, charging respondents with the violation of Section 2(c) of the Clayton Act as amended by the Robinson-Patman Act in connection with the sale of seafood products.

After being served with the complaint, respondents entered into an agreement dated April 11, 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 duly made 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

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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 said 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, that said order to cease and desist 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, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Walter P. Shiel & Co., is a corporation existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 5506 White-Henry-Stuart Building, Seattle, Wash.

2. Respondent Walter P. Shiel is an individual and is an officer of said corporate respondent with his office and principal place of business located at 5506 White-Henry-Stuart Building, Seattle, Wash. Respondents Lawrence C. Calvert, Starr H. Calvert, and William Calvert are individuals and are officers of said corporate respondent, with their office and principal place of business located at Pier 31, Seattle, Wash.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Clayton Act, as amended by the Robinson-Patman Act. This proceeding is in the interest of the public.

ORDER

It is ordered, That Walter P. Shiel & Co., a corporation, and its officers and directors, and Walter P. Shiel, Lawrence C. Calvert, Starr H. Calvert, and William Calvert, individually and as officers of said respondent corporation, and respondents' agents,

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representatives, or employees, directly or indirectly, or through any corporate or other device, in connection with the sale of seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying, granting, or passing on, either directly or indirectly, to any buyer or to anyone acting for or in behalf of or subject to the direct or indirect control of such buyer, brokerage earned or received by respondents on sales made for their packer-principals, by allowing to buyers lower prices which reflect all or any part of such brokerage, or by granting them allowances or rebates which are in lieu of such brokerage, or by any other method or means.

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 3d day of July 1958, become the decision of the Commission; and, accordingly,

It is ordered, That the respondents herein 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

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IN THE MATTER OF
EDWARD B. McGOVERN TRADING AS
McGOVERN AND McGOVERN

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(C) OF THE CLAYTON ACT

Docket 6980. Complaint, Dec. 12, 1957—Decision, July 3, 1958

Consent order requiring a broker of canned salmon and other sea food in Seattle, Wash., to cease granting illegal rebates and allowances to certain buyers which were taken from his own brokerage fees, in violation of Section 2(c) of the Clayton Act, by such practices as: (1) payment of all or a part of the freight charges, and granting "trade discounts" and "promotional allowances"; and (2) selling at a net price lower than that accounted for to his packer-principal.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 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 Edward B. McGovern is an individual trading and doing business as McGovern and McGovern, with his office and principal place of business located at 675 Colman Building, Seattle, Wash.

PAR. 2. Respondent is now, and for many years prior hereto has been engaged in the business of distributing canned seafood (chiefly salmon, and to a lesser extent tuna, crab, and clams). Respondent distributes as both a trader for his own account, and as a primary broker negotiating sales for the accounts of a number of packers located in various areas within and beyond the continental United States, including the Puget Sound and Columbia River areas, and British Columbia and Alaska. When negotiating sales for the account of his principal, respondent receives for his services, a commission or brokerage fee of 5% of the net selling price of the merchandise sold. When selling through secondary or field brokers who negotiate sales for him respondent pays them for their services a commission or broker-