

Complaint

IN THE MATTER OF
THE SALMON AND TUNA SALES COMPANY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(C) OF THE CLAYTON ACT*Docket 6981. Complaint, Dec. 12, 1957—Decision, July 3, 1958*

Consent order requiring brokers of canned salmon and other seafood products in Seattle, Wash., to cease making allowances in lieu of brokerage 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 their packer-principals; (2) granting deductions from price by way of allowances or rebates, a part or all of which were not charged back to the packer-principals; 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, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, The Salmon and Tuna Sales Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington. Respondent B. Lou Thrailkill is an individual and 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 1018 Second Avenue, Seattle, Wash.

PAR. 2. Respondents, and each of them, 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 accounts of a number of packers located in various areas within and beyond the continental United States, including the Puget Sound area and the Territory of Alaska.

PAR. 3. Respondents, and each of them, 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 in which respondents are located. Thus respondents are, and have been for many years prior hereto, 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, and each of them, 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 accounts of sale to their packer-principals. 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 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 2½% of the net selling price.

PAR. 5. Respondents, and each of them, 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 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. In the course and conduct of their business as aforesaid respondents, and each of them, have made grants or allowances in substantial amount in lieu of brokerage to certain field brokers on sales to such field brokers for their own accounts.

PAR. 7. In making payments of commissions, brokerage fees or discounts, or allowances in lieu thereof, as alleged and described above, the respondents and each of them 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 canned salmon and other food 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. 8. The acts and practices of the 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 by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13).

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

Respondents, pro se.

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 jurisdic-

Decision

55 F.T.C.

tional facts had been duly make 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 The Salmon and Tuna Sales Company 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 now located at 411 Seneca Street, Seattle, Wash. Respondent B. Lou Thrailkill is an individual and is president of The Salmon and Tuna Sales Company and his principal office and place of business is also now located at 411 Seneca Street, Seattle, Wash.

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 The Salmon and Tuna Sales Company, a corporation, and its officers and directors, and B. Lou Thrailkill, 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:

1. 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.

2. 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

55 F.T.C.

IN THE MATTER OF
IVAR WENDT

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

Docket 6982. 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 and illegal price concessions, in violation of Section 2(c) of the Clayton Act, including such practices as: (1) selling at net prices lower than those accounted for to his packer-principals, with the difference absorbed out of his brokerage fees; (2) granting deductions from price by way of rebates, a part or all of which were not charged back to the packer-principals but were absorbed by him; and (3) taking a reduced brokerage from his principals on substantial sales which involved price concessions.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and herein-after more particularly designated and described has violated and is 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 Ivar Wendt is an individual proprietor of a brokerage firm operated in his own name—Ivar Wendt. His place of business is located at 701 Central Building, Seattle, Wash. Respondent Wendt controls, directs and formulates the affairs and operating policies of said brokerage firm.

PAR. 2. The respondent is now and has been for the past several years engaged primarily in the business of distributing canned salmon and various other types of canned fish, crabs and crab meat, lobsters, clams, shrimp, etc., hereinafter sometimes referred to as food products. He operates 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. Respondent also makes substantial purchases of canned salmon for his own account for resale.

PAR. 3. Respondent Wendt is a substantial factor in the sale and distribution of food products selling and distributing these products in the various States of the United States but prin-