

Complaint

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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-

cipally in the States of New York and Florida. He distributes said products generally through secondary or field brokers located in the marketing areas of the buyers. In the conduct of his business, as aforesaid, respondent has, directly or indirectly, shipped or transported, or caused said food products, when sold to be shipped or transported from the canning plants or warehouses of the packers thereof to buyers located in various States of the United States other than the State or territory of origin of said food products. Thus respondent is now, and has for many years, been engaged in a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. Respondent Wendt is usually compensated for his services in arranging for the sale and distribution of said food products for the account of his various packer-principals at the rate of 5% of the net selling price of the merchandise. Respondent deducts the brokerage commission from the proceeds of the sale when accounting to his packer-principals. The account of sales also itemizes other discounts and allowances granted to the purchaser, such as allowances for dents and swells, cash discounts, and discounts for labels, all of which are shown as deductions from the selling price, and charged back to the packer-principals in the usual course of business. In a majority of sales made for his packer-principals, respondent utilizes the services of field brokers located in the various marketing areas of the buyers. When such field brokers are utilized in making the sale, the 5% brokerage is customarily split evenly between the respondent and the field brokers. In many instances, however, respondent negotiates sales direct to large volume purchasers, such as retail chain outlets, without utilizing the services of field brokers.

PAR. 5. In the course and conduct of his business in commerce, respondent, as a primary broker for various packer-principals, has made grants, allowances or rebates in substantial amounts in lieu of brokerage and price concessions which reflect brokerage to certain buyers of said food products, a part or all of which were not charged back to the various packer-principals but on the contrary, were taken from the brokerage earnings of the respondent. In some instances these allowances, rebates or price concessions made to buyers were shared proportionally by the primary and the field broker out of their brokerage earnings on the particular transaction.

Among and including, but not necessarily limited to, the meth-

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ods or means employed by the respondent in so doing were the following:

(a) Selling to certain buyers at net prices which were less than those accounted for to his packer-principals with the difference absorbed by respondent out of his brokerage earnings.

(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 his packer-principals and was absorbed by respondent out of his brokerage earnings.

(c) Taking a reduced brokerage from his packer-principals on substantial sales which involved price concessions to certain buyers.

PAR. 6. In addition to representing various packer-principals as a primary broker, respondent has made substantial purchases of canned salmon for his own account for resale, and on these purchases he received and accepted from the seller his usual 5% brokerage. On the resale of all or a part of these salmon respondent allowed and paid to the buyers thereof brokerage in the amount, or the approximate amount, of $2\frac{1}{2}\%$ of the net selling price.

PAR. 7. The acts and practices of the respondent, as herein alleged and described, constitute a violation of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended.

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

Mr. Dale E. Sherrow of Seattle, Wash., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The complaint herein was issued on December 12, 1957, charging respondent 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, respondent 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.

Respondent, pursuant to the aforesaid agreement has admitted

all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings or jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives 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 respondent that he has 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 Ivar Wendt is an individual trading and doing business as Ivar Wendt under and by virtue of the laws of the State of Washington, with his office and principal place of business located at 701 Central Building, Seattle, Wash.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent 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 Ivar Wendt, individually and doing business as Ivar Wendt, or under any other name, and his agents, repre-

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sentatives, or employees, directly or through any corporate, partnership, 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 who is subject to the direct or indirect control of such buyer, brokerage earned or received by respondent on sales made for his 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 brokerage, or by any other method or means.

3. Receiving or accepting, directly or indirectly from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of seafood products by respondent 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 3d day of July 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Complaint

IN THE MATTER OF
WARD'S COVE PACKING COMPANY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(C) OF THE CLAYTON ACT*Docket 7021. Complaint, Dec. 31, 1957—Decision, July 3, 1958*

Consent order requiring a Seattle sea food packer and its affiliated selling agent to cease violating Section 2(c) of the Clayton Act by such practices as reducing the price on direct sales to favored customers by the 2½ per cent which would ordinarily be paid as brokerage fees and, on transactions handled through field brokers, allowing favored customers discounts under the guise of advertising allowances, accomplished by cutting the brokers' normal commission.

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 by the Robinson-Patman Act (U.S.C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent Ward's Cove Packing Company, hereinafter sometimes referred to as the corporate respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the territory of Alaska, with its principal office and place of business located at 303 East Northlake Avenue, Seattle, Wash. It is engaged in the business of canning and packing seafood, including salmon, all of which are hereinafter sometimes referred to as seafood products, for sale and distribution to purchasers located throughout the United States. Respondent is a substantial factor in the canned seafood industry.

PAR. 2. Respondent Frank B. Peterson Company is a partnership engaged in business, principally as sales agent for corporate respondent Ward's Cove Packing Company, named herein, but also acts in a lesser degree as a primary broker or sales agent for other seafood canners or packers. Respondent Frank B. Peterson Company maintains its office and place of business at the same address as that of the corporate respondent, or 303 East Northlake Avenue, Seattle, Wash.

PAR. 3. Respondents A. Winn Brindle and Harold A. Brindle

are president, and vice president and secretary, respectively, of corporate respondent, and are also copartners in respondent Frank B. Peterson Company. These individual respondents maintain their offices and principal place of business at the same address as that of the corporate and partnership respondents, or 303 East Northlake Avenue, Seattle, Wash. These individual respondents substantially own and control both the corporate and the partnership respondents, and are also responsible for their acts and practices, including their sales and distribution policies.

PAR. 4. In the marketing of their seafood products, the respondents and each of them, are represented by a number of food brokers in various marketing areas throughout the United States. These brokers are generally referred to herein as field brokers. Normally, these brokers are paid by respondents for their services a commission or brokerage fee at the rate of $2\frac{1}{2}\%$ of the net selling price of the merchandise sold. In addition to selling through brokers, the respondents, and each of them, sell direct to certain favored customers, without utilizing the services of their field brokers in the particular transactions.

PAR. 5. In the course and conduct of their business in commerce for the past few years, the respondents, and each of them, have sold and distributed, and now sell and distribute their canned seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, to buyers located in the several States of the United States, other than the State of Washington in which respondents are located. The respondents transport, or cause such canned seafood products, when sold, to be transported from their place of business in the State of Washington to customers located in various other States of the United States, or to other States for storage, pending sale. There has been at all times mentioned herein a continuous course of trade in commerce in such seafood products across state lines between the respondents, and each of them, and the respective buyers thereof.

PAR. 6. In connection with the sale and distribution of their seafood products, in commerce, the corporate and partnership respondents, under the control and direction of the individual respondents, acting both as officers of the corporate respondent and in their individual capacities as copartners trading as Frank B. Peterson Company, have granted discounts or allowances in lieu of brokerage, or have made sales at reduced prices reflecting brokerage, to buyers of such canned seafood products.

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

(a) Granting or allowing to certain buyers, or agents of buyers, reductions in prices in the approximate amount of $2\frac{1}{2}\%$ of the net selling price of the merchandise in transactions where the services of field brokers were not utilized.

(b) Granting or allowing to certain buyers deductions from prices by way of allowances, discounts or rebates under the guise of advertising allowances, which allowances are accompanied by a reduction in the brokerage or commission normally paid to respondents' field brokers.

PAR. 7. The acts and practices of the respondents, as alleged and described herein, 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.

Mr. Richard T. Olson of the firm of *Moriarty, Olson & Campbell* of Seattle, Wash., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The complaint herein was issued December 31, 1957, charging respondents with paying, granting or allowing, directly or indirectly, something of value as a commission, brokerage, allowance, discount, rebate, or other compensation, upon or in connection with the sale of their canned seafood products to certain buyers, or agents of buyers, in violation of Section 2(c) of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Sec. 13).

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, 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-

tional 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 Ward's Cove Packing Company is a corporation, existing and doing business under and by virtue of the laws of the Territory of Alaska; respondent Frank B. Peterson Company is a partnership existing and doing business under and by virtue of the laws of the State of Washington; respondents A. Winn Brindle, also known as A. W. Brindle, and Harold A. Brindle are individuals and officers in respondent Ward's Cove Packing Company, and copartners in respondent Frank B. Peterson Company. All of the respondents have their offices and principal place of business located at 303 East Northlake Avenue, 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 re-

spondents 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 Ward's Cove Packing Company, a corporation, and its officers and directors, and A. Winn Brindle, and Harold A. Brindle, individually and as officers of said corporation, and respondents' agents, representatives or employees, directly or through any corporate, partnership, or other device in connection with the sale of sea food 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.

It is further ordered, That Frank B. Peterson Company, a partnership, and A. Winn Brindle and Harold A. Brindle, individually and as copartners in the said Frank B. Peterson Company and their agents, representatives, or employees, directly or through any corporate, partnership, 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 who is 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 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:

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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.

Decision

IN THE MATTER OF
HOLLAND FURNACE COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6203. Complaint, May 4, 1954—Decision, July 7, 1958*

Order requiring a manufacturer of furnaces, with plant in Holland, Mich.—with some 475 branch offices in various States and a number of sub-branches, selling its products through house-to-house salesmen whom it supplied with sales manuals, catalogs, and other literature, and assigned a certain territory—to cease using deceptive sales schemes under which its said salesmen posed as Government or utility inspectors or heating engineers to gain access to homes and then dismantled furnaces without the owner's permission, ostensibly to determine the extent of repairs necessary, and refused to reassemble them on false representations that this would involve grave dangers of fire, gas, and explosion, or that the competitor-manufacturer of the furnace was out of business or that parts were unobtainable; requiring owners of such dismantled furnaces to sign releases absolving the company of liability for its employees' negligence or other liability before reassembling the furnaces; or otherwise using scare tactics, misrepresentation, and coercion to sell its furnaces, heating equipment, and parts.

John W. Brookfield, Jr., and William R. Tincher, Esqs., supporting the complaint.

Trenkamp & Coakley, by Robert H. Trenkamp and Edward A. McLeod, Esqs., for respondent.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

PRELIMINARY STATEMENT

Under date of May 4, 1954, the Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act, stating that it had reason to believe that the respondent, Holland Furnace Company, a corporation, has violated the provisions of the said Act and that a proceeding by it in respect thereof would be in the public interest, issued its complaint, copy whereof was served upon the respondent in due form of law. The specific charges covering the acts complained of are hereinafter embodied in this decision under the heading of "Issues." The respondent did, on June 23, 1954, file its answer, which answer denied the jurisdiction of the Commission to hear and determine the issues raised herein on the ground that respondent is not engaged in