

Complaint

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IN THE MATTER OF  
F. A. GOSSE COMPANY ET AL.

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

*Docket 7099. Complaint, Mar. 27, 1958—Decision, Oct. 16, 1958*

Consent order requiring a Seattle broker of canned salmon and other sea food products, to cease making illegal brokerage payments to favored customers, in violation of Section 2(c) of the Clayton Act through (1) selling at net prices less than the amount accounted for to the packer-principals; (2) granting price reductions, a part or all of which were not charged back to the packer-principals; and (3) taking reduced brokerage on sales involving price concessions.

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 (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent F. A. Gosse Company, hereinafter sometimes 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 principal office and place of business located at 1800 Exchange Building, Seattle, Wash.

Respondent Frederick A. Gosse is an individual and is president of the corporate respondent, and owns all or substantially all of its capital stock. As president and owner, he formulates, directs and controls the acts, practices and policies of the said corporate respondent, including its sales and distribution policies.

PAR. 2. Respondents, both corporate and individual, are now and for many years past have been engaged in the business of selling and distributing food products, including canned salmon, all of which are hereinafter sometimes referred to as food products. Respondents distribute as primary brokers, negotiating sales for the account of a number of their packer-principals. Respondents are a substantial factor in the seafood industry, particularly in the sale and distribution of canned salmon.

PAR. 3. Respondents sell and distribute their food products generally through field brokers, located in the various marketing areas, to buyers located throughout the United States. Respondents have, directly or indirectly, shipped or transported, or caused said food products, when sold, to be shipped or transported from the canning plants of their various packer-principals, or from their warehouses, to buyers located in various states of the United States other than the state or territory of origin of such food products. Thus respondents, both corporate and individual, 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. Respondents, both corporate and individual, are usually compensated for their services in arranging for the sale and distribution of such food products by deducting a brokerage fee or commission of 5% of the net sales price from the proceeds in their account of sales to their packer-principals. When field brokers are utilized in making the sale, they are customarily compensated for their services by receiving from respondents as primary brokers a brokerage fee or commission in the amount of 2½% of the net selling price of the food products sold.

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

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

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

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

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

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PAR. 6. The acts and practices of respondents, both corporate and individual, as hereinabove alleged and described, constitute violations of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

*Mr. Cecil G. Miles and Mr. John J. McNally* for the Commission.  
*Jones & Grey, by Mr. Hargrave Garrison*, of Seattle, Wash., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents, F. A. Gosse Company, a corporation, and Frederick A. Gosse, individually and as an officer of said corporation, with having violated the provisions of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13). The respondents were duly served with process and the initial hearing canceled pending negotiations for settlement between the parties.

On August 19, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between the respondents and their attorney, and Cecil G. Miles and John J. McNally, counsel supporting the complaint, under date of August 18, 1958, subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by that Bureau.

On due consideration of the said "Agreement Containing Consent Order to Cease and Desist," the hearing examiner finds that said agreement, both in form and in content, is in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that, by said agreement, the parties have specifically agreed that:

1. Respondent F. A. Gosse 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 located at 1813 (formerly 1800) Exchange Building, in the city of Seattle, State of Washington.

Respondent Frederick A. Gosse is an individual and is President of respondent corporation, with his office and principal place of business located at 1813 (formerly 1800) Exchange Building, in the City of Seattle, State of Washington.

2. Pursuant to the provisions of §2(c) of the Clayton Act, as

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amended (U.S.C., Title 15, §13), the Federal Trade Commission on March 27, 1958, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. 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.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This 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.

9. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified, or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states a legal cause for complaint under the

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Clayton Act as amended, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

## ORDER

*It is ordered*, That F. A. Gosse Company, a corporation, and its officers and directors, and Frederick A. Gosse, 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 16th day of October 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents F. A. Gosse Company, a corporation, and Frederick A. Gosse, individually and as an officer of said 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.

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## ARNOLD CONSTABLE CORP.

*Docket 7106. Order, Oct. 16, 1958.*

Order dismissing certain paragraphs of complaint, since it appeared that respondent, in composing the questioned advertisements, relied on advice from the Chief, Division of Wool and Fur Labeling, of the Commission.

This matter having been heard on the respondent's motion for recision of the complaint insofar as it charges the respondent with having falsely advertised the prices of certain fur products as reductions from the prices at which said products were usually sold by the respondent, in violation of Section 5(a)(5) of the Fur Products Labeling Act, and Rule 44(a) of the Rules and Regulations promulgated thereunder, which motion was, on September 12, 1958, certified to the Commission by the hearing examiner; and

It appearing that the ground for the motion is that the respondent in composing the questioned advertisements relied upon advice contained in certain communications it had received from the Chief, Division of Wool and Fur Labeling, of the Commission's Bureau of Investigation, copies of which communications are in the record as Respondent's Exhibits 2, 3, and 4; and

It further appearing that while the aforesaid communications did not purport to construe the respondent's advertisements in relation to the provisions of Rule 44(a) of the Rules and Regulations, which Rule prohibits, among other things, the use in advertising of claimed reductions from prices which are, in fact, "fictitious," such communications did clearly imply that the only questions with respect to the propriety of the advertisements were whether the higher prices mentioned therein were the "current market prices" of the products described, the affirmative of which, it was stated, is required by Rule 44(b) in support of "comparative prices and percentage savings" claims made in advertisements which do not otherwise specify the time of the compared prices, and whether the respondent had adequate records to disclose the fact upon which such claims were based, as required by Rule 44(e); and

The Commission being of the opinion that while the foregoing does not constitute a defense to any unlawful activity in which the respondent may have engaged, principles of equity and ordinary fair dealing do militate against the further prosecution of

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the complaint insofar as it charges the respondent with the use of fictitious pricing claims:

*Accordingly, it is ordered,* That paragraphs 7, 8 and 9 of the complaint be, and they hereby are, dismissed, it being understood, however, that this action shall be without prejudice to the right of the Commission to institute a new proceeding against the respondent or to take such other action as may be warranted in the event the practices alleged to be unlawful are continued or resumed.

## Decision

IN THE MATTER OF  
LEON SEVILLA TRADING AS  
WORLD ARTS AUCTION GALLERY

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

*Docket 7124. Complaint, Apr. 17, 1958—Decision, Oct. 16, 1958*

Consent order requiring a furrier in San Francisco, Calif., to cease violating the labeling, invoicing, and advertising requirements of the Fur Products Labeling Act.

*Mr. John J. McNally* for the Commission.

*Mr. Leonard A. Worthington*, of San Francisco, Calif., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with misbranding and with falsely and deceptively invoicing and advertising certain of his fur products, in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

After the issuance of the complaint, respondent, his counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and acting assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement identifies respondent Leon Sevilla as an individual trading as World Arts Auction Gallery, with his office and principal place of business located at 314 Sutter Street, San Francisco, Calif.

The agreement provides, among other things, that the respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this 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 the complaint may be used in construing the terms of the order agreed upon, which