

Complaint

IN THE MATTER OF
CHINOOK PACKING COMPANY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(c) OF THE CLAYTON ACT*Docket 7147. Complaint, May 8, 1958—Decision, Oct. 18, 1958*

Consent order requiring packers of salmon in Chinook, Wash., to cease discriminating in price in violation of Section 2(c) of the Clayton Act by granting discounts or allowances in lieu of brokerage on many sales of canned and fresh salmon products to brokers purchasing for their own account for resale.

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. Respondent Chinook Packing Company, hereinafter sometimes referred to as respondent Chinook, or 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 Chinook, Wash. Respondent Chinook has been for the past several years, and is now, engaged in packing, selling and distributing canned salmon, and to a lesser extent in the sale of fresh salmon at retail, all of which are sometimes hereinafter referred to as sea food products. Respondent Chinook is a substantial factor in the sale and distribution of sea food products, particularly canned salmon.

PAR. 2. Respondent Albion L. Gile is an individual and is president and treasurer of corporate respondent. Respondent Gile, together with his wife, owns a substantial majority of the outstanding capital stock of the corporate respondent. As president and treasurer and as a substantial owner, as described above, respondent Gile exercises authority and control over the corporate respondent and its business activities, including the direction of its sales and distribution policies.

PAR. 3. In the course and conduct of their business, respond-

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ents, both corporate and individual, for the past several years, have sold and distributed, and are now selling and distributing, their sea food 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 in which respondents are located. Said respondents transport, or cause such sea food products, when sold, to be transported, from their place of business in the State of Washington to buyers, or to the buyers' customers, located in various other States of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said sea food products across State lines between respondents and the respective buyers of said products.

PAR. 4. Respondents, both corporate and individual, for the past several years, have sold and distributed, and are now selling and distributing, their sea food products in commerce to customers located in the several States of the United States, generally through brokers. When selling through brokers, respondents have paid, granted or allowed them for their services in effecting the sales, a brokerage ranging from 2 to 5 percent of the net selling price of the merchandise sold.

In a substantial number of instances, however, respondents, both corporate and individual, have made sales to some brokers for their own account for resale, on which sales they have paid, granted or allowed these brokers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof.

PAR. 5. In making payments of commissions, brokerage, or discounts or allowances in lieu thereof, to certain buyers for their own account for resale, as alleged and described hereinabove, the respondents both corporate and individual, have violated 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).

Mr. Cecil G. Miles and Mr. John J. McNally, for the Commission.
Mr. Albion L. Gile, for himself and respondent corporation.

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, Chinook Packing Company, a corporation, and Albion L. Gile, 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 25, 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 individual respondent for himself and the corporate respondent and Cecil G. Miles and John J. McNally, counsel supporting the complaint, under date of June 17, 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 Chinook Packing 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 in the city of Chinook, State of Washington.

Respondent Albion L. Gile is an individual and is president and treasurer of Chinook Packing Company, with his principal office and place of business located in the city of Chinook, State of Washington.

2. Pursuant to the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, §13), the Federal Trade Commission, on May 8, issued its complaint in this proceeding against respondents and a true copy was thereafter duly served on respondents.

3. Respondents admit all of 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.

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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 a 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 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 Chinook Packing Company, a corporation, and its officers and Albion L. Gile, individually and as an officer of said corporation, and respondents' agents, representatives, or employees, directly 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 allowing, directly or indirectly, to any

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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.

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 18th day of October 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Chinook Packing Company, a corporation, and Albion L. Gile, 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.

IN THE MATTER OF
SAMUEL MILLER & SONS, INC., ET AL

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

Docket 7164. Complaint, May 28, 1958—Decision, Oct. 18, 1958

Consent order requiring manufacturers in New York City to cease violating the Wool Products Labeling Act by stamping or tagging as "All Wool," interlining materials which contained substantial quantities of nonwoolen fibers, and by failing in other respects to comply with the labeling requirements of the Act.

Mr. John T. Walker for the Commission.

No appearance for the respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an