

Complaint

IN THE MATTER OF
G. P. HALFERTY & CO., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(c) OF THE CLAYTON ACT*Docket 7035. Complaint, Jan. 14, 1958—Decision, Nov. 19, 1958*

Consent order requiring a Seattle, Wash., broker of sea food, particularly canned salmon—selling its own pack as well as acting as broker for various principals—to cease violating the brokerage provision of the Clayton Act by selling its principals' products to certain favored buyers at lower net prices than those accounted for to the principals; by selling its own products to certain favored buyers at net prices lower than those to non-favored buyers, which reflected brokerage or a discount in lieu thereof; and by granting to at least one large direct buyer a rebate of 2½% percent, the customary brokerage fee, under the guise of promotional allowances.

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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 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 G. P. Halferty & Co., 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 508 Colman Building, Seattle, Wash.

PAR. 2. Respondent Guy P. Halferty is an individual and is president of corporate respondent. He maintains his principal office and place of business at 508 Colman Building, Seattle, Wash. He is sometimes referred to herein as individual respondent or as respondent Halferty. Respondent Halferty owns, all or substantially all of the capital stock of corporate respondent and is responsible for its acts and practices, including its purchase, sales and distribution policies. Respondent Halferty also owns substantial interest in and is president of Halferty Canneries, Inc., a Washington corporation which owns and operates canneries in Kodiak, Cordona, and Juneau, Alaska. Respondent Halferty

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also owns a substantial interest in and is president of Pioneer Canneries, Inc., a Washington corporation which owns a clam packing plant at Aberdeen, Wash.

PAR. 3. Respondents, both corporate and individual, for the past several years have been, and are now, engaged in the business of selling and distributing seafood products, including canned salmon, all of which are hereinafter sometimes referred to as sea food products, obtained from Halferty Canneries, Inc., and Pioneer Canneries, Inc., substantially owned and controlled by individual respondent Halferty as indicated in paragraph 2. These seafood products are obtained from these canneries by respondents on a cost plus 5% basis, with no commission allowed or paid by the packer to either the individual or corporate respondent in connection with these purchases. Respondents, both corporate and individual, resell these seafood products in the name of the corporate respondent to customers located in the various States of the United States. In addition, respondents, both corporate and individual, act as sales agent, or primary broker for various packer principals in the sale and distribution of their seafood products, for which respondents are paid for their services by their principals a commission or brokerage fee at the rate of 5 percent of the net selling price of the merchandise sold. Respondents are substantial factors in the seafood industry, particularly with respect to canned salmon.

PAR. 4. In the sale and distribution of their own seafood products, as well as the seafood products of their principals, respondents are usually represented in the various marketing areas throughout the United States by local or field brokers, hereinafter referred to as field brokers. These field brokers are generally compensated by respondents for their services in making the sales by the payment of a brokerage fee or commission at the rate of $2\frac{1}{2}\%$ of the net selling price of the merchandise sold. In many instances, however, respondents make substantial sales direct to at least one certain favored customer without utilizing the services of their field brokers in these particular transactions, and on these sales, pay, grant or allow to this customer rebates in lieu of brokerage under the guise of promotional allowance of $2\frac{1}{2}\%$ percent or approximately $2\frac{1}{2}\%$ percent of the net selling price of the merchandise.

PAR. 5. In the course and conduct of their business in commerce for the past several years, respondents, both corporate and individual, have sold and distributed and now sell and dis-

tribute 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 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. There has been at all times mentioned herein a continuous course of trade in commerce in such seafood products across state lines between respondents and the respective purchasers of said products.

PAR. 6. In connection with the sale and distribution of their seafood products in commerce respondents, both corporate and individual, have made sales to certain favored customers at reduced prices which reflect brokerage and have granted or allowed rebates in lieu of brokerage to at least one large buyer with a number of branches located in several cities of North Carolina, South Carolina and Florida. Among and including, but not necessarily limited to, the method or means employed by respondents in so doing are the following:

(a) Selling their principals' seafood products to certain favored buyers at net prices which were less than those accounted for to respondents' packer-principals.

(b) Selling their own seafood products to certain favored buyers at net prices lower than the prices to nonfavored buyers, which prices reflect brokerage or a discount in lieu thereof.

(c) Granting to at least one large buyer purchasing direct, without utilizing the services of field brokers, an allowance or rebate of $2\frac{1}{2}$ percent, or approximately $2\frac{1}{2}$ percent, of the net selling price of the merchandise, under the guise of a promotional allowance.

PAR. 7. The acts and practices of the respondents, both corporate and individual, as alleged and described herein, are in violation 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.

Ryan, Askren, Mathewson, Carlson & King, by *Mr. Snyder J. King*, of Seattle, Wash., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on January 14, 1958, charging respondents with paying, granting or allowing rebates in lieu of

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brokerage, on direct sales of their seafood products, including canned salmon, to at least one favored customer and to at least one large buyer, without utilizing the services of field brokers; and with selling said products to certain favored customers at reduced prices which reflect brokerage, in violation of §2(c) of the Clayton Act as amended (U.S.C. Title 15, §13).

Thereafter, on August 21, 1958, Respondents, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent G. P. Halferty & Co. as a Washington corporation, with its office and principal place of business located at 508 Colman Building, Seattle, Wash., and Respondent Guy P. Halferty as an individual and as president of said corporate respondent, and having the same address as the corporate respondent.

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.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, 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; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in con-

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sonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That G. P. Halferty & Co., a corporation, and its officers, and Guy P. Halferty, individually and as an officer of said corporate respondent, and respondents' representatives, agents, 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:

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 19th day of November 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents G. P. Halferty & Co., a corporation, and Guy P. Halferty, 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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IN THE MATTER OF
WHIZ FISH PRODUCTS COMPANY, ET AL.

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

Docket 7089. Complaint, Mar. 20, 1958—Decision, Nov. 19, 1958

Consent order requiring Seattle, Wash., packers and distributors of sea food, including canned salmon and tuna, to cease violating the brokerage section of the Clayton Act by granting to direct buyers a discount in the amount of the usual brokerage; selling to certain customers at reduced prices, the reductions reflecting brokerage; and selling through their brokers to certain buyers at reduced prices offset by cutting the brokers' commission.

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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 Whiz Fish Products Company, hereinafter sometimes referred to as Whiz or as corporate respondent, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington. Respondents Charles D. Alhadeff, Jack J. Alhadeff and Ike N. Alhadeff are individuals and are president, vice president and secretary-treasurer, respectively, of said corporate respondent. Said individual respondents own all or substantially all of the capital stock of the corporate respondent, and in conjunction and cooperation with each other, formulate, direct and control the acts, practices and policies of the corporate respondent, including its sales and distribution policies. The principal office and place of business of said corporate and individual respondents is located at 2000 Alaskan Way, Seattle, Wash.

PAR. 2. Respondents, both corporate and individual, are now and for many years past have been engaged in the business of packing, selling and distributing seafood products, including canned salmon and tuna, and to a minor degree canned pet food, all of which are hereinafter referred to as food products. In addi-