

Complaint

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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.

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 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-

tion to their own packing operations, respondents sell and distribute large amounts of seafood packed by others, as well as seafood packed through joint packing operations between respondents and other packers. Respondents are substantial factors in the canned seafood industry, and particularly canned salmon. In marketing their food products, respondents are represented by a number of food brokers located in various marketing areas throughout the United States, which brokers are normally paid for their services by respondents at the rate of 2½ percent of the net selling price of the merchandise sold. Respondents also make sales to certain of their customers direct without utilizing the services of their brokers in making these particular sales.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents, and each of them, directly or indirectly, have shipped or transported said food products, or caused the same, when sold, to be shipped or transported from the canning plants or warehouses of respondents to buyers located in the various States of the United States other than the state or territory of origin of such shipments. Thus the respondents 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. In the course and conduct of their business of selling and distributing food products in commerce, as aforesaid, the respondents, and each of them, have paid, granted or allowed, and are now paying, granting or allowing, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection with the sale and distribution of their food products to certain customers purchasing for their own accounts, or to agents or intermediaries who are, in fact, acting for or in behalf of, or who are subject to the direct or indirect control of said buyers. Among and including, but not necessarily limited to, the methods or means employed by respondents in so doing are the following:

(a) Selling their food products to certain buyers direct, without utilizing the services of their brokers, and granting an allowance or discount to these buyers in the approximate amount of the brokerage normally paid their brokers on such sales.

(b) Selling to certain customers at reduced prices which reflect all, or a part of the normal brokerage generally paid to their brokers.

(c) Selling through their brokers to certain buyers at reduced

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prices, which reductions are offset in whole or in part by a partial reduction of the brokerage or commission normally paid their brokers for making such sales.

PAR. 5. The acts and practices of the respondents, and each of them, 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 March 20, 1958, charging respondents with paying, granting or allowing something of value as commission, brokerage or other compensation, or allowance or discount in lieu thereof, in connection with the sale of their food products, including canned salmon and tuna and, to a minor degree, canned pet food, to buyers purchasing for their own account for resale, or to agents or intermediaries acting for or in behalf of, or subject to the direct or indirect control of, said buyers, 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 Whiz Fish Products Company as a Washington corporation, with its office and principal place of business located at 2000 Alaskan Way, Seattle, Wash., and respondents Charles D. Alhadeff, Jack J. Alhadeff, and Ike N. Alhadeff as individuals and as officers of said respondent corporation, 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 consonance 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 Whiz Fish Products Company, a corporation, and its officers, and Charles D. Alhadeff, Jack J. Alhadeff, and Ike N. Alhadeff, individually and as officers of said respondent 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, allowing, or passing on, 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 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,

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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 Whiz Fish Products Company, a corporation, and Charles D. Alhadeff, Jack J. Alhadeff, and Ike N. Alhadeff, individually and as officers 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
GENERAL PRODUCTS CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7102. Complaint, Mar. 28, 1958—Decision, Nov. 19, 1958

Consent order requiring distributors in Los Angeles, Calif., of drug preparations containing vitamins and minerals, to cease representing falsely in advertising, including radio broadcasts, that their "VCS" preparation was cheaper than competing products, that the price was specially reduced for a limited time only and available to selected customers only, that the product supplied users with all the essential vitamins and minerals and was of value in conditions resulting from vitamin and mineral deficiencies; and that their "Pounds-Off" preparation contained a newly discovered antihunger ingredient, and that by its use once a day a specific weight loss would be achieved in a prescribed period.

Mr. John J. McNally for the Commission.

Mr. Lee J. Myers, of Long Beach, Calif., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with the dissemination of false advertisements of their drug and food preparations designated "VCS Formula" and "Pounds-Off", including, but not limited to, radio broadcasts transmitted by the west coast stations of the CBS network, covering the States of Washington, Oregon, and California, which advertisements are misleading in material respects and constitute unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act.

After the issuance of the complaint, 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 transmitted to the hearing examiner for consideration.

The agreement identifies Respondent General Products Corporation as a California corporation, with its office and principal place of business located at 541 North Le Brea, Los Angeles, Calif., and respondents David Ormont and Alan Mann as individuals and officers of the respondent corporation, having the same offices and places of business as respondent corporation.

The agreement provides, among other things, that respondents