

Complaint

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IN THE MATTER OF
NELBRO PACKING COMPANY

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

Docket 7209. Complaint, July 23, 1958—Decision, Dec. 24, 1958

Consent order requiring a distributor of canned salmon in Seattle, Wash., to cease violating the brokerage section of the Clayton Act as evidenced by its allowance of discounts reflecting brokerage on direct sales to a large retail chain.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has been and is 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 Nelbro Packing Company, hereinafter sometimes referred to as Nelbro, 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 401 Colman Building, Seattle, Wash. Respondent Nelbro is a wholly owned subsidiary of Nelson Bros. Fisheries Ltd., a Canadian corporation, located at Vancouver, B.C. Respondent Nelbro is engaged in distributing canned salmon, all of which are hereinafter referred to as seafood products. Respondent Nelbro is a substantial factor in the sale and distribution of seafood products, particularly canned salmon, acting in its own behalf as well as in behalf of its parent corporation in connection with sales of seafood products within the United States.

PAR. 2. In the course and conduct of its business, respondent Nelbro for the past several years has sold and distributed and is now selling and distributing 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 in which respondent is located. Said respondent transports or causes such seafood products when sold to be transported from

its place of business or warehouse in the State of Washington to buyers or to said buyers' places of business located in various other States of the United States. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in said seafood products across state lines between respondents and the respective buyers of said seafood products.

PAR. 3. For the past several years respondent Nelbro has sold and distributed, and is now selling and distributing seafood products in commerce to customers located in the several States of the United States generally through primary brokers. When selling through said brokers, respondent pays them for their services usually at the rate of five percent of the net selling price of the merchandise. In a substantial number of instances, however, respondent has made sales direct to at least one large retail chain buyer, for its own account, without utilizing the services of a broker, and on these sales respondent has allowed said buyer a discount or an allowance in lieu of brokerage, or a lower net price which reflects the brokerage normally paid to brokers for negotiating sales for it.

PAR. 4. In paying or granting to said buyers for their own account a discount or an allowance in lieu of brokerage, or a lower net price which reflects brokerage as alleged and described hereinabove, respondent has violated and is 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 for the Commission.

Jones & Gray, by *Mr. Hargrave Garrison*, of Seattle, Wash., for respondent.

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 respondent with having violated the provisions of §2(c) of the Clayton Act as amended (U.S.C. Title 15, §13). The respondent was duly served with process.

On October 15, 1958, respondent and the attorneys for both parties entered into an "Agreement Containing Consent Order to Cease and Desist," which was duly approved by the Bureau of Litigation of the Commission, and, on October 23, 1958, submitted to the undersigned hearing examiner of the Commission for his consideration. Thereafter the initial hearing was cancelled.

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After due consideration of the said "Agreement Containing Consent Order to Cease and Desist," the hearing examiner finds that said agreement, in both form and 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 Nelbro 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 at 401 Colman Building, in the City of Seattle, State of Washington.

2. Pursuant to the provisions of subsection (c) of §2 of the Clayton Act, as amended (U.S.C. Title 15, §13), the Federal Trade Commission, on July 23, 1958, issued its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

3. 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.

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

5. Respondent waives:

(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 it 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 respondent that it has 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 re-

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spondent. 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 agreement 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 person of the respondent herein; that the complaint states a legal cause for complaint under the Clayton Act, as amended, against the respondent, 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 Nelbro Packing Company, a corporation, and its officers, 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 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, the initial decision of the hearing examiner shall, on the 24th day of December 1958, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF
LADD KNITTING MILLS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7216. Complaint, Aug. 4, 1958—Decision, Dec. 24, 1958*

Consent order requiring two affiliated manufacturers and sellers of women's sweaters, with offices in Reading, Pa., and New York City, to cease advertising falsely in magazines and trade papers and on attached tags and labels, that their orlon sweaters would "not pill or fuzz" or were "Pill Proofed."

Mr. Garland S. Ferguson supporting complaint.

Respondents, Pro se.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On August 4, 1958, the Federal Trade Commission issued a complaint charging Ladd Knitting Mills, Inc., a corporation and Talbott Knitting Mills, Inc.,¹ a corporation and Lester C. Laufbahn, Nancy Laufbahn, and Stephen H. Lewis, individually and as officers of said corporations, hereinafter referred to as respondents, with misleading and deceptive statements and representations in advertising their orlon sweaters.

After issuance and service of the complaint, the respondents, and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of the matters complained about. The agreement has been approved by the director and assistant director of the Bureau of Litigation.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner

¹ Now known as Talbott, Inc.