

Complaint

55 F.T.C.

IN THE MATTER OF
P. J. BURK PACKING CO., INC., ET AL.

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

Docket 7202. Complaint, July 22, 1958—Decision, Feb. 12, 1959

Consent order requiring two associated canners of salmon and other seafood products in Bellingham, Wash., to cease violating the brokerage provisions of the Clayton Act (Sec. 2(c)) by reducing their selling prices to certain direct buyers in the approximate amount of the brokerage fees which would have been due to brokers had they negotiated the sales.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent P. J. Burk Packing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington.

Respondent Burk Canning Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington.

Respondents P. J. Burk Packing Co., Inc., and Burk Canning Co., Inc., hereinafter sometimes referred to as corporate respondents, share common officers and both have their offices and principal places of business located at Port of Bellingham Municipal Dock, in the City of Bellingham, State of Washington. Corporate respondent Burk Canning Co., Inc., is a wholly owned subsidiary of corporate respondent P. J. Burk Packing Co., Inc., and leases its plant facilities from its said parent corporation. The business address of said corporate respondents is Post Office Box 660, Bellingham, Wash.

Respondent John G. Mitchell, hereinafter sometimes referred to as individual respondent, is president of both of said corporate respondents and directs and controls their affairs and policies, including their sales and distribution policies. The business ad-

1208

Complaint

dress of individual respondent is the same as that of corporate respondents.

The said corporate and individual respondents are engaged in the business of packing, distributing and selling canned salmon and other seafood products. Their volume of business is substantial.

PAR. 2. Respondents, and each of them, now sell and distribute, and for many years last past have sold and distributed, their canned salmon and other seafood products in commerce to customers located in the several states of the United States. They sell and distribute their products through primary brokers, generally located in Seattle, Washington, and also, upon occasion, through field brokers located in the various marketing areas, to the buyers for resale located throughout the various States of the United States. Said respondents also sell directly to some buyers for resale from time to time, without utilizing the services of any broker.

When selling through primary brokers said respondents pay these brokers for their services a commission or brokerage fee, generally in the amount of 5% of the net selling price of the merchandise sold. When selling through field brokers without utilizing the service of a primary broker, respondents pay a commission or brokerage fee in amounts which vary from time to time in relation to the net selling price of the merchandise sold.

PAR. 3. In the course and conduct of their business over the past several years, but more particularly from July 1, 1954, up to the present, respondents, and each of them, have sold and distributed, and now sell and distribute, their canned salmon and other seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended to buyers for resale located in the several States of the United States other than the State of Washington in which respondents are located. Respondents, and each of them, transport or cause such canned salmon and other seafood products, when sold, to be transported from their place of business in the State of Washington to such buyers for resale 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 canned salmon and other seafood products across state lines between said respondents and the respective buyers for resale of such canned salmon and other seafood products.

Decision

55 F.T.C.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents, and each of them, have made substantial sales of canned salmon and other seafood products to certain direct buyers for resale without utilizing the services of either primary brokers or field brokers, and in many such instances have reduced their selling prices to such direct buyers in the approximate amount of the brokerage fees or commissions which would otherwise have been paid to such brokers had they negotiated such sales for respondents.

PAR. 5. In making payments of commission, brokerage fees, or discounts or allowances in lieu thereof as alleged and described above, respondents, and each of them, in the course and conduct of their business in commerce, as hereinabove described, 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 canned salmon and other seafood products to buyers who were and are purchasing for their own account for resale, or to agents or intermediaries who were and are, in fact, acting for or in behalf of, or who were and are subject to the direct or indirect control of such buyers.

PAR. 6. The acts and practices of respondents, and each of them, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13).

Mr. Cecil G. Miles for the Commission.

Mr. Herald A. O'Neill, of Seattle, Wash., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves alleged violations of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13), it being charged in the complaint, in substance, that the respondents have paid, granted, or allowed and are now paying, granting, or allowing something of value as a commission, brokerage, or other compensation or allowance or discount in lieu thereof in connection with the sale and distribution of their canned salmon and other seafood products 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 such buyers.

On December 12, 1958, there was submitted to the undersigned

1208

Decision

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 respondents and the attorneys for both parties, under date of December 1, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent P. J. Burk Packing Co., Inc., 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 Port of Bellingham Municipal Dock, Post Office Box 660, in the city of Bellingham, State of Washington.

Respondent Burk Canning Co., Inc., 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 Port of Bellingham Municipal Dock, Post Office Box 660, in the city of Bellingham, State of Washington.

Respondent John G. Mitchell is an individual and is president of corporate respondents P. J. Burk Packing Co., Inc., and Burk Canning Co., Inc., with his office and principal place of business located at Port of Bellingham Municipal Dock, Post Office Box 660, in the city of Bellingham, State of Washington.

2. Pursuant to the provisions of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13), the Federal Trade Commission on July 22, 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

Order

55 F.T.C.

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 order 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 each of the respondents herein; that the complaint states a legal cause for complaint under the provisions of §2(c) of the Clayton Act, as amended (U.S.C., Title 15, §13), 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 respondents P. J. Burk Packing Co., Inc., a corporation, and its officers, Burk Canning Co., Inc., a corporation, and its officers; and John G. Mitchell, individually and as an officer of respondent corporations, and respondents' officers, agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of seafood products

1208

Decision

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 12th day of February 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents 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.

Complaint

55 F.T.C.

IN THE MATTER OF
CARL H. ANDERSON TRADING AS
E. H. HAMLIN ASSOCIATES

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

Docket 7204. Complaint, July 23, 1958—Decision, Feb. 12, 1959

Consent order requiring a primary broker of seafood products in Seattle, Wash., to cease violating the brokerage section of the Clayton Act (Sec. 2(c)) by making grants or allowances in lieu of brokerage to certain buyers or their agents consisting of price concessions or rebates, a part or all of which were not charged back to the packer-principals but were taken from his brokerage or that of his field brokers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and herein-after 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 Carl H. Anderson is an individual trading as E. H. Hamlin Associates, with his office and principal place of business located at 218 Mutual Life Building, Seattle, Wash. Respondent is sole proprietor of the business and formulates, directs, and controls the acts and practices, including the sales policies, of E. H. Hamlin Associates.

PAR. 2. Respondent is now, and for the past several years has been engaged in the business of selling and distributing seafood products such as canned salmon, crab, halibut, clams, and tuna, all of which are hereinafter referred to as seafood products. Respondent distributes as a primary broker, negotiating sales for the account of a number of packer-principals located in various areas within and beyond the continental United States, including the Puget Sound and Columbia River areas, and the Territory of Alaska.

PAR. 3. Respondent sells and distributes said seafood products generally through field brokers located in various marketing areas to buyers located throughout the United States. Respondent has