

Complaint

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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

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directly or indirectly caused such seafood products, when sold, to be transported from the canning plants or warehouses of their respective packer-principals to buyers thereof located in various states of the United States other than the State or territory of origin of said seafood products. Thus respondent has been for the past several years and is now engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act.

PAR. 4. Respondent is usually compensated for his services in negotiating the sale and distribution of such seafood products by deducting a brokerage or commission from the proceeds in his account of sale to his packer-principals. The brokerage or commission deducted by respondent is customarily five percent of the net selling price of the merchandise sold. The field brokers employed are usually compensated for their services by receiving from respondent, as a primary broker, a brokerage or commission in the amount of $2\frac{1}{2}$ percent of the net selling price of the merchandise.

PAR. 5. Respondent, in the course and conduct of his business in commerce as a primary broker for various packer-principals, has made grants or allowances in substantial amounts in lieu of brokerage to certain buyers of said seafood products, or agents of said buyers, by affording differentials or concessions in price, or by making rebates or other payments, a part or all of which were not charged back to the various packer-principals but were, on the contrary, taken from all or a portion of the brokerage or commission earnings of respondent and of his field brokers.

Among and including, but not necessarily limited to, the methods or means employed by respondent in so doing are the following:

(a) Selling to certain buyers at net prices which were less than those accounted for to his packer-principals;

(b) Granting to certain buyers or the buyers' agents deductions from price by way of allowances, rebates, or other payments, a part or all of which were not charged back to his packer-principals.

(c) Making payments or allowances as or in lieu of brokerage to at least one agent of certain buyers, which payments came from respondent's brokerage earnings and were not charged back to his packer-principals.

PAR. 6. The acts and practices of respondent as hereinabove alleged and described constitute violations of the provisions of

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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.

Mr. B. F. Reno, Jr., of Seattle, Wash., for respondent.

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 respondent named therein, in the course and conduct of his business in commerce as a primary broker selling and distributing seafood products such as canned salmon, crab, halibut, clams, and tuna, for various packer-principals, has made grants or allowances in substantial amounts in lieu of brokerage to certain buyers of said seafood products, or to agents of said buyers, by affording differentials or concessions in price, or by making rebates or other payments, a part or all of which were not charged back to the packer-principals, but were taken from all or a portion of the brokerage or commission earnings of respondent and his field brokers.

On December 12, 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 respondent and the attorneys for both parties, under date of December 2, 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 Carl H. Anderson is an individual trading as E. H. Hamlin Associates and is doing business under and by virtue of the laws of the State of Washington, with his office and principal place of business located at 218 Mutual Life Building, in the city of Seattle, 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 23, 1958, issued its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

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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 he 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 he 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 respondent. 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 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 respondent 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 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

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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 Carl H. Anderson, individually and trading as E. H. Hamlin Associates, or under any other name, and his agents, representatives, or employees, directly or through any corporate, partnership or other device, in connection with the sale and distribution of seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

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 respondent on sales made for his 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 12th day of February 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Carl H. Anderson, an individual trading as E. H. Hamlin Associates, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Complaint

IN THE MATTER OF
P. E. HARRIS COMPANY, INC.

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

Docket 7208. Complaint, July 23, 1958—Decision, Feb. 12, 1959

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

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 P. E. Harris Company, Inc., hereinafter sometimes referred to as respondent Harris 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 1220 Dexter Horton Building, Seattle, Wash. Respondent is a substantial factor in the sale and distribution of seafood products, particularly canned salmon.

PAR. 2. Respondent is now and for the past several years has been engaged in the business of canning, packing, selling and distributing seafood, including canned salmon, hereinafter referred to as seafood products. A substantial part of the seafood products sold and distributed by respondent are canned and packed in its own plants. However respondent also distributes seafood products 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.