

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.

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PAR. 3. Respondent generally sells and distributes both its own and its principals' seafood products through field brokers located in various marketing areas, to buyers located throughout the United States. Respondent has directly or indirectly shipped or transported or caused such seafood products, when sold, to be shipped or transported from its canning plants or warehouses, or from the canning plants or warehouses of its 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. When acting as a primary broker in negotiating sales for its packer-principals, respondent is usually compensated for its services at the rate of 5 percent of the net selling price of the merchandise as established by said packer-principals by deducting the brokerage from the proceeds in its account of sale to its packer-principals. The field brokers employed to negotiate sales for respondent are usually compensated at the rate of 2½ percent of the net selling price of the merchandise sold. However some field brokers received 3½ percent for said services.

PAR. 5. In the course and conduct of its business in commerce for the past several years both as a packer and as a primary broker, respondent has paid, granted or allowed a brokerage or commission in substantial amounts to certain buyers for their own account, and has made grants or allowances in substantial amounts in lieu of brokerage by affording price concessions or rebates or allowances, a part or all of which were not charged back to its various packer-principals but were, on the contrary, taken from all or a portion of the brokerage or commission earnings of respondent and of its 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, purchasing for their own account on which purchases respondent paid, granted or allowed the buyer the customary field brokerage.

(b) Selling to certain buyers at net prices which were less than those accounted for to its packer-principals, a part or all of the difference in prices being taken from respondent's brokerage or commission.

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(c) Granting to certain buyers deductions from price by way of allowances or rebates, a part or all of which were not charged back to its packer-principals but were taken from respondent's brokerage.

PAR. 6. The acts and practices of respondent as herein alleged and described constitute violations of 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.

Mr. James Wm. Johnston, 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 its business of canning and packing seafood, including canned salmon, and selling and distributing in commerce its own seafood products and those of a number of packer-principals for whom it acts as a primary broker, has paid, granted or allowed a brokerage or commission in substantial amounts to certain buyers for their own account, and has made grants or allowances in lieu of brokerage by affording price concessions or rebates or allowances, a part or all of which were not charged back to its various packer-principals, but were taken from all or a portion of the brokerage or commission earnings of respondent and of its 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 November 28, 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. E. Harris Company, 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

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business located at 1220 Dexter Horton 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.

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 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

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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 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 P. E. Harris Company, Inc., 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:

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 buyers, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with the sale of 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 who is subject to the direct or indirect control of such buyer, brokerage earned or received by respondent on sales made for its 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 brokerage, or by any other method or means.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision herein, filed December 24, 1958, accepting an agreement containing a consent order theretofore executed by the respondent and counsel in support of the complaint, service of which was complete on January 12, 1959; and

It appearing that through inadvertence the word "on" was omitted from the first line of the paragraph numbered "2" in the order contained in the initial decision, resulting in a variance

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between said order and the order agreed upon by the parties; and

The Commission being of the opinion that this clerical error should be corrected:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, modified by inserting the word "on" after the word "passing" in the first line of paragraph 2 of the order contained in said initial decision.

It is further ordered, That the initial decision, as so modified, shall, on the 12th day of February 1959, become the decision of the Commission.

It is further ordered, That the respondent, P. E. Harris Company, Inc., a corporation, shall, within sixty (60) days after service upon it of this decision, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order contained in the aforesaid initial decision as modified.

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IN THE MATTER OF
HUDSON HOUSE, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SECS. 2(a) AND 2(c) OF THE CLAYTON ACT*Docket 7215. Complaint, Aug. 1, 1958—Decision, Feb. 12, 1959*

Consent order requiring a large packer and wholesaler of foods and its subsidiary manufacturer of bakery and fountain supplies in Portland, Oreg., to cease discriminating in price in violation of the Clayton Act by such practices as charging certain favored buyers from 2% to 18% less for maraschino cherries than their competitors and also giving the former a 2% discount for cash while the latter received only 1%, thus violating Section 2(a); and by granting 2½% to 3% discounts in lieu of brokerage to certain direct buyers purchasing for their own accounts, in violation of Section 2(c).

COMPLAINT

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 subsections (a) and (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:

Count I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondent Hudson House, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 401 SE. Water Avenue, Portland, Oreg. It is engaged in the purchase and sale at wholesale of produce, groceries, fruits and bakery products, the packing of fruits and vegetables, the processing of frozen foods and the operation of a chain of retail grocery stores. Hudson House, Inc. was for many years the largest briner of cherries in the United States and still is a substantial factor in the processing and sale of brine cherries. Respondent Hudson House, Inc. has annual net sales of approximately \$31,500,000 and is directed and controlled by