

Complaint

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

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respondents, Robert A. Hudson, Sr. and Francis T. Rowell who are responsible for its acts and practices.

Respondent Gray & Company 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., and being a wholly owned subsidiary of respondent Hudson House, Inc., it is directed and controlled by respondents, Robert A. Hudson, Sr. and Francis T. Rowell who are responsible for its acts and practices.

Respondent Robert A. Hudson, Sr. is an individual with an office located at 401 SE. Water Avenue, Portland, Oreg., and is president of respondent Hudson House, Inc., owning 100% of its stock.

Respondent Francis T. Rowell is an individual with an office located at 401 SE. Water Avenue, Portland, Oreg., and is first vice president of respondent Hudson House, Inc. and vice president of respondent Gray & Company.

PAR. 2. Respondent Gray & Company is now, and has been since 1945, engaged in the manufacture and sale of bakery and fountain supplies including the processing and sale of maraschino cherries, glace cherries, broken cherries, jams, jellies, olives, toppings, mincemeat, fruit mix and other such products. Respondent Gray & Company produces maraschino cherries from brine cherries which it purchases from its parent, respondent Hudson House, Inc.

Respondent Gray & Company sells maraschino cherries and other products on a nationwide basis. Except for the Portland, Oreg. area where it sells through company salesmen, respondent Gray & Company sells its products through brokers to which it pays 5% commissions for sales of maraschino cherries and 3% commissions for sales of other cherries.

PAR. 3. In the course and conduct of its business, respondent Gray & Company has engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent Gray & Company ships its products, or causes them to be shipped, from its place of business in the State of Oregon to purchasers located in States other than the State of Oregon.

PAR. 4. In the course and conduct of its said business in commerce, respondent Gray & Company is now and has been in competition with other corporations, partnerships, individuals, and firms engaged in manufacturing, processing, selling and dis-

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tributing maraschino cherries, and other cherries, bakery and fountain supplies.

Many of respondent Gray & Company's purchasers are likewise, directly or indirectly, competitively engaged with each other and with the customers of Gray & Company's competitors in the resale of said commodities within the trading area in which respondent Gray & Company's said competitors, offer for sale and sell such commodities as those purchased from said respondent.

PAR. 5. Since January 1954, while engaged as aforesaid in commerce among the several States of the United States, respondent Gray & Company has been, and is now, in the course of such commerce discriminating in price between purchasers of commodities of like grade and quality, which commodities are sold for use, consumption and resale within the several States of the United States, in that respondent has been, and is now, selling such commodities to some purchasers at higher prices than the prices at which such commodities of like grade and quality are sold by said respondent to other purchasers. Said favored purchasers are now competing and have competed since January 1954, directly or indirectly, with respondent Gray & Company's nonfavored purchasers.

Respondent Gray & Company has sold, and now sells, its commodities through its brokers or its sales agents to some of its buyers at net prices from approximately 2% to 18% higher than it has sold and now sells commodities of like grade and quality to some of its favored buyers, many of whom are engaged in active, direct or indirect, competition with respondent Gray & Company's nonfavored buyers.

For example, specific illustrations of representative discriminations in commerce and prices of certain commodities of like grade and quality sold by respondent Gray & Company during the year 1956 to its competing favored and nonfavored buyers are as follows:

During February 1956 respondent Gray & Company sold maraschino cherries to its two favored purchasers in San Francisco, Calif., Tiedemann & McMorran and A. Giurlani & Bros., and to the following competing nonfavored purchasers who paid net prices which exceeded the net prices paid by Tiedemann & McMorran for commodities of like grade and quality by the following percentages: R. Vannucci & Company, 7.4%; Julliard Fancy Foods Co., 6.7% and 10.8%; Peroni & Erminio, 9.5%; and Riva

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Distributing, 4.8%. The favored purchaser Tiedemann & McMorran also received a discriminatory discount of 2% for cash while some of the nonfavored purchasers received 1% for cash.

During January and March of 1956 respondent Gray & Company sold maraschino cherries to its favored purchaser in Sacramento, Calif., Tiedemann & McMorran, and to the following competing nonfavored purchasers who paid net prices which exceeded the net prices paid by Tiedemann & McMorran for commodities of like grade and quality by the following percentages: Lancaster Wholesale Grocery, 7.4% and 6.7%; Valley Wholesale Grocery, 9.5% and 6.1%.

During January of 1956 respondent Gray & Company sold maraschino cherries to its favored purchaser in Los Angeles, Calif., A. M. Lewis, Inc., and to the following competing nonfavored purchasers who paid net prices which exceeded the net prices paid by A. M. Lewis, Inc., for commodities of like grade and quality by the following percentages: Certified Grocers, 8.3%, 17.9% and 8.8%; Mayfair Markets, 10.6%.

During January, February, March and December of 1956 respondent Gray & Company sold maraschino cherries to its favored purchaser in Los Angeles, Calif., S. E. Rykoff & Company, and to the following competing nonfavored purchasers who paid net prices which exceeded the net prices paid by S. E. Rykoff & Company for commodities of like grade and quality by the following percentages: Eckhard's Better Lemon Juice, 5%; Tasty Products Company, 10%; Western Restaurant Supply Co., 10%; Hollywood Bar Supply Co., 5%; Leake & Abbey Bar & Restaurant Supply, 5%.

During January 1956 respondent Gray & Company sold maraschino cherries for delivery in Spokane, Wash., to its favored purchaser Regent Canfood Company (a wholly owned buying subsidiary of Safeway Stores, Inc.), and to the following competing nonfavored purchasers who paid net prices which exceeded the net prices paid by Regent Canfood Company for commodities of like grade and quality by the following percentages: U. R. M. Stores, 2.2% and 1.9%; Sigman Food Stores, 7.4% and 4.3%.

During January and February, 1956 Regent Canfood Company was also so favored in the purchase of maraschino cherries over its competitors in Butte, Montana, to the following extent: Gamble-Robinson Company, 1.7%, 2% and 5.3%; Davidson Grocery Company, 1.7% and 2%.

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The favored purchaser Regent Canfood Company also received a discriminatory discount of 2% for cash while the nonfavored purchasers received 1% for cash.

During July 1956 respondent Gray & Company sold maraschino cherries to its favored purchaser in Salt Lake City, Utah, Utah Wholesale Grocery, and to a competing nonfavored purchaser, Pacific Fruit & Produce Company, which paid net prices which exceeded the net prices paid by Utah Wholesale Grocery Company for commodities of like grade and quality by 5%.

PAR. 6. The effect of such discriminations in price made by respondent Gray & Company, as set forth in paragraph 5 hereof, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent Gray & Company and its purchasers are respectively engaged; or to injure, destroy, or prevent competition with respondent Gray & Company or with purchasers of respondent Gray & Company who receive the benefit of such discriminations.

PAR. 7. The acts and practices of the respondent Gray & Company, as alleged above, violate subsection (a) of Section 2 of the Clayton Act as amended.

Count II

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

PAR. 8. Paragraphs 1 and 4, inclusive, of Count I hereof are hereby repeated and made part of this Count as fully and with the same force and effect as though here again set forth in full.

PAR. 9. In the course and conduct of its business as above described, respondent Gray & Company has paid or granted, directly and indirectly, to some of its customers commissions, brokerage, or other compensation, or allowances, or discounts in lieu thereof, in connection with purchases of products by such customers from respondent Gray & Company in their own names and for their own accounts for resale.

For example, specific illustrations of such allowances made in lieu of brokerage are as follows:

During the year 1956 respondent Gray & Company granted discriminatory allowances as described above in connection with purchases of respondent Gray & Company's products made for their own accounts to S. E. Rykoff & Company of Los Angeles, Calif.; Tiedemann & McMorran of San Francisco, Calif.; Regent Canfood Company of San Francisco, Calif., (a wholly owned buy-

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ing subsidiary of Safeway Stores, Inc.), for delivery to Safeway Stores in Spokane, Wash., Butte, Mont., and Portland, Oreg., part of which allowances were made in lieu of one-half of the 5% brokerage fee customarily paid by respondent Gray & Company to its brokers on such purchases.

During the years 1956 and 1957 respondent Gray & Company granted allowances of from 3% to 5% in connection with purchases of respondent Gray & Company's products made for their own accounts to Fraering Brokerage Company of New Orleans, La., Mountain States Wholesale Company of Boise, Idaho, and Miles Distributing Company of Reno, Nev., which allowances were made in lieu of 3% and 5% brokerage fees customarily paid by respondent Gray & Company to its brokers on such purchases.

PAR. 10. The acts and practices of the respondent Gray & Company, as alleged above, violated subsection (c) of Section 2 of the Clayton Act as amended.

Mr. Fredric T. Suss for the Commission.

Mr. Robert H. Huntington of *Hart, Spencer, McCulloch, Rockwood and Davies*, of Portland, Ore., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves alleged violations of subsections (a) and (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Sec. 13), it being charged in the complaint, in substance, that Gray & Company, a wholly owned subsidiary of respondent Hudson House, Inc., named therein, in the course of its business of selling bakery and fountain supplies, including maraschino cherries, glace cherries, broken cherries, jams, jellies, olives, toppings, mincemeat, fruit mix and other such products, in commerce, has discriminated in price between purchasers by granting lower prices and by giving higher cash discounts to favored customers, and has made payments, grants, allowances or discounts in lieu of brokerage.

On December 19, 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 respondents and the attorneys for both parties, under date of December 10, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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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 Hudson House, Inc., is a corporation organized and existing under the laws of the State of Oregon with its principal office and place of business located at 401 Southeast Water Avenue, Portland, Oreg. It is directed and controlled by respondents Robert A. Hudson, Sr., and Francis T. Rowell, who are responsible for its acts and practices.

Respondent Gray & Company is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located at 401 Southeast Water Avenue, Portland, Oreg., and is a wholly owned subsidiary of respondent Hudson House, Inc. Respondent Robert A. Hudson, Sr., is an individual with an office located at 401 Southeast Water Avenue, Portland, Oreg., and is president of respondent, Hudson House, Inc., owning one hundred percent of its stock. The respondent Francis T. Rowell is an individual with an office located at 401 Southeast Water Avenue, Portland, Oreg., and is first vice president of respondent, Hudson House, Inc., and vice president of respondent Gray & Company.

2. Pursuant to the provisions of the Clayton Act, as amended, the Federal Trade Commission on August 1, 1958, issued its complaint in this proceeding against respondents and a true copy was thereafter duly served on respondents.

3. Respondents admit all jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts have 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 and conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

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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 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 each of the respondents herein; that the complaint states a legal cause for complaint under the provisions of §2(a) and (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 Hudson House, Inc., a corporation, and Gray & Company, a corporation, their officers, respondent Robert A. Hudson, Sr., individually and as president of Hudson House, Inc., and Francis T. Rowell, individually and as first vice president of Hudson House, Inc., and vice president of Gray & Company, their representatives, agents and employees, directly or through any corporate or other device in connection with the

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sale of maraschino cherries, other brine cherry products, olives, jams, jellies, mincemeat, or other bakery or fountain supplies in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(1) Discriminating directly or indirectly in price by selling any of said products of like grade and quality to any purchaser at a price which is lower than the price charged any other purchaser who in fact competes with the favored purchaser in the resale and distribution of respondents' said products;

(2) Paying, granting, or allowing, directly or indirectly, to any buyer, or to any one 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 their said products to such buyer for his own account.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's decision, filed December 30, 1958, accepting an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel in support of the complaint; and

The respondents, by letter received January 22, 1959, having noted that the hearing examiner's statement in the first paragraph of the initial decision purporting to set forth the alleged violations of law involved in this proceeding includes certain allegations not contained in the complaint, and it appearing that said paragraph does contain an erroneous summation of the allegations of the complaint and should be corrected:

It is ordered, That the initial decision be, and it hereby is, amended by substituting for the first paragraph thereof the following:

This proceeding involves alleged violations of subsections (a) and (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Sec. 13), it being charged in the complaint, in substance, that Gray & Company, a wholly owned subsidiary of respondent Hudson House, Inc., named therein, in the course of its business of selling bakery and fountain supplies, including maraschino cherries, glaze cherries, broken cherries, jams, jellies, olives, toppings, mincemeat, fruit mix and other such products, in commerce, has discriminated in price between purchasers by

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granting lower prices and by giving higher cash discounts to favored customers, and has made payments, grants, allowances or discounts in lieu of brokerage.

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

It is further ordered, That the respondents, Hudson House, Inc., and Gray & Company, corporations, Robert A. Hudson, Sr., individually and as president of Hudson House, Inc., and Francis T. Rowell, individually and as first vice president of Hudson House, Inc., and vice president of Gray & Company, 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 contained in the aforesaid initial decision as amended.

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IN THE MATTER OF
EMARD PACKING CO., INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(c) OF THE CLAYTON ACT*Docket 7249. Complaint, Sept. 11, 1958—Decision, Feb. 12, 1959*

Consent order requiring packers of seafood products and their exclusive primary brokers in Seattle, Wash., to cease violating Sec. 2(c) of the Clayton Act by making payments, allowances, etc., in lieu of brokerage, or granting lower prices which reflected brokerage to certain favored customers.

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 Emard Packing Co., Inc., hereinafter sometimes referred to as corporate packer 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 911 Lowman Building, Seattle, Wash.

Respondent Henry J. Emard, hereinafter sometimes referred to as individual packer respondent, is an individual and is president and treasurer of the corporate packer respondent. He owns a majority of the outstanding capital stock of the corporate packer respondent and directs and controls its business practices and policies, including its sales and distribution policies. His principal office and place of business is the same as that of corporate packer respondent.

The said packer respondents, both corporate and individual, have been for the past several years and are now engaged in the business of packing, selling and distributing canned salmon and other seafood products, hereinafter referred to as seafood products, to various buyers throughout the United States. Respondents' annual volume of business during the past several years has been substantial.