

Complaint

IN THE MATTER

AMERICAN NATIONAL GROWERS CORPORATION, ET AL.

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

Docket 7240. Complaint, Aug. 28, 1958—Decision, Feb. 26, 1959

Consent order requiring a packer of fruits and vegetables under the "Blue Goose" and other labels with principal office in Los Angeles, Calif.—doing a net business in 1956 of over \$44,600,000—to cease violating Sec. 2(c) of the Clayton Act by paying the customary brokerage fee to brokers on direct sales for their own account for resale; and requiring three of its brokers to cease receiving or accepting such illegal payments.

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 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 American National Growers Corporation, hereinafter sometimes referred to as seller respondent, or as respondent American, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office at 122 East Seventh Street, Los Angeles, Calif., and having three principal operating branches known as Texas Division at Weslaco, Tex., Western Division at Los Angeles, Calif., and Eastern Division at Fort Pierce, Fla. Respondent American was known as American National Foods, Inc. from January 1, 1954 to August 13, 1956, and is engaged in the growing, packing and marketing of fresh fruits and vegetables. Its Eastern Division with offices located in Fort Pierce, Fla., conducts growing, packing and marketing operations dealing principally with Florida citrus, vegetables and melons, and marketing operations with respect to peaches and apples.

Respondent Ballentine Produce, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arkansas with its principal office and place of business located on Highway 71, North Alma, Ark. Respondent Ballentine Produce, Inc., hereinafter sometimes referred to as broker

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respondent, is engaged in business primarily as a distributor of fruits and vegetables and is directed and controlled by Harrell H. Ballentine, Herman Ballentine, and LuDell Ballentine, who are responsible for its acts and practices. Respondent Harrell H. Ballentine is an individual doing business both as Harrell H. Ballentine, broker, and as president of Ballentine Produce, Inc., with an office on Highway 71, North Alma, Ark., hereinafter sometimes referred to as broker respondent. Respondent Herman Ballentine is an individual with an office located on Highway 71, North Alma, Ark., and is vice president of respondent Ballentine Produce, Inc. Respondent LuDell Ballentine is an individual with an office located on Highway 71, North Alma, Ark., and is secretary-treasurer of respondent Ballentine Produce, Inc.

Respondent Hugh B. Campbell, 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 234 SE. Alder Street, Portland, Oreg. Respondent Hugh B. Campbell, Inc. is engaged in business as a broker and distributor of fresh fruits and vegetables and is hereinafter sometimes referred to as broker respondent, and is directed and controlled by respondents Hugh B. Campbell, Robert Recken and Mary A. Campbell who are responsible for its acts and practices. Respondent Hugh B. Campbell is an individual with an office located at 234 SE. Alder Street, Portland, Oreg., and is president of respondent Hugh B. Campbell, Inc. Respondent Robert Recken is an individual with an office located at 234 SE. Alder Street, Portland, Oreg., and is vice president of respondent Hugh B. Campbell, Inc. Respondent Mary A. Campbell is an individual with an office located at 234 SE. Alder Street, Portland, Oreg., and is secretary-treasurer of respondent Hugh B. Campbell, Inc.

Respondents Oscar L. Davis, Jr. and Mrs. Oscar L. Davis, Sr., are individuals with offices located at 2426 West 13th Street, Chattanooga, Tenn., doing business as an equal partnership trading as O. L. Davis Brokerage Company, and are engaged in business as brokers of citrus fruits, potatoes, onions, apples and seed potatoes, and they are hereinafter sometimes referred to as broker respondents.

PAR. 2. Respondent American is now, and for several years past has been, selling fruits and vegetables under the "Blue Goose" and other labels and has been acting as selling agent for other packers and growers of citrus fruits and vegetables. Respondent American sells and distributes these food products

throughout the United States directly to buyers without the intervention of brokers, and to buyers through brokers who represent it in effecting such sales, and for the services of these brokers, respondent American pays them a brokerage fee or commission ranging from 5¢ to 10¢ per box. Respondent American is a substantial factor in the sale and distribution of fruits and vegetables and its net sales of all products during the year 1956 amounted to over \$44,600,000, over \$17,000,000 of which were made by its Eastern Division.

The broker respondents named herein are now, and for the past several years have been, engaged in the brokerage business representing various principals located throughout the United States. One of the principals represented by these broker respondents is the seller respondent American named herein. In representing respondent American in the sale of fruit and vegetable products, they were and are paid for their services a brokerage fee or commission ranging from 5¢ to 10¢ per box.

PAR. 3. In the course and conduct of its business in commerce, as "commerce" is defined in the aforesaid Clayton Act, respondent American has been for the past several years and is now selling and distributing fruit and vegetable products to buyers located in the several states of the United States, and has transported or caused such products, when sold, to be transported from its place of business in Fort Pierce, Fla., or from other places within said State, to buyers located in the various States of the United States other than the State of Florida. There is and has been at all times mentioned herein, a continuous course of trade in commerce in said fruit and vegetable products across state lines between respondent American and the respective buyers of said fruit and vegetable products, including the broker respondents named herein.

In the course and conduct of their business in commerce, as "commerce" is defined in the aforesaid Clayton Act, the broker respondents named herein have been and are now selling and distributing fruit and vegetable products for their principals located in the various States of the United States other than the States in which the broker respondents are located. Said respondents have transported, or caused said fruit and vegetable products, when sold, to be transported from their principals' places of business to said buyers' places of business located in other States, or to their customers located therein. There is and

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has been at all times mentioned herein, a continuous course of trade in commerce in the sale of said fruit products across State lines between the broker respondents and their respective principals, including respondent American.

PAR. 4. In some instances respondent American makes direct sales to some, but not all, of its brokers for their own account for resale, on which sales respondent American pays or grants, directly or indirectly, a commission or brokerage, or an allowance or discount in lieu thereof, to said brokers. The broker respondents named herein are some of the brokers who have made a number of such purchases for their own accounts from respondent American, on which purchases they received and accepted, directly or indirectly, said commission or brokerage, or allowances or discounts in lieu thereof, from seller respondent American.

PAR. 5. The acts and practices of seller respondent American in paying, granting, or allowing, directly or indirectly, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, on sales of fruit and vegetable products to the broker respondents for their own accounts as alleged and described above, and the acts and practices of the broker respondents in receiving and accepting, directly or indirectly, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, on their purchases of fruit and vegetable products as herein alleged and described, are each in violation of subsection (c) of Section 2 of the Clayton Act as amended (U.S.C., Title 15, Sec. 13).

Mr. Fredric T. Suss for the Commission.

Mr. Harry S. Dunmire, of Pittsburgh, Pa., for American National Growers Corporation.

Mr. Robert L. Recken, of Portland, Oreg., for Hugh B. Campbell, Inc., Hugh B. Campbell, Robert Recken, and Mary A. Campbell.

No appearance for other respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of Section 2(c) of the Clayton Act, as amended by the Robinson-Patman Act. An agreement for disposition of the pro-

ceeding by means of a consent order has now been entered into by counsel supporting the complaint, and all of the respondents, except Mrs. Oscar L. Davis, Sr., who is deceased. The term respondents as used hereinafter will not include this individual. The agreement provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent American National Growers Corporation is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office at 122 East Seventh Street, Los Angeles, Calif., and its three operating branches at Fort Pierce, Fla.; Weslaco, Tex.; and Los Angeles, Calif.

Respondent Ballentine Produce, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arkansas, with its principal office and place of business located on Highway 71, North Alma, Ark., and it is directed and controlled by respondents Harrell H. Ballentine, Herman Ballentine, and Ludell Ballentine, who are responsible for its acts and practices and all of whom have offices located on Highway 71, North Alma, Ark. Respondent Harrell H. Ballentine is an individual doing business both as Harrell H. Ballentine,

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broker, and as president of Ballentine Produce, Inc. Respondent Herman Ballentine is an individual and is vice president of respondent Ballentine Produce, Inc. Respondent Ludell Ballentine is an individual and is secretary-treasurer of respondent Ballentine Produce, Inc.

Respondent Hugh B. Campbell, Inc., is a corporation organized, existing and doing business under the laws of the State of Oregon, with its principal office and place of business located at 234 SE. Alder Street, Portland, Oreg., and is directed and controlled by respondents Hugh B. Campbell, Robert Recken and Mary A. Campbell, who are responsible for its acts and practices and all of whom have offices located at 234 Southeast Alder Street, Portland, Oreg. Respondent Hugh B. Campbell is an individual and president of respondent Hugh B. Campbell, Inc. Respondent Robert Recken is an individual and is vice president of respondent Hugh B. Campbell, Inc. Respondent Mary A. Campbell is an individual and is secretary-treasurer of respondent Hugh B. Campbell, Inc.

Respondent Oscar L. Davis, Jr., is an individual with office located at 2426 West 13th Street, Chattanooga, Tenn., doing business as O. L. Davis Brokerage Company.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That the respondent, American National Growers Corporation, a corporation, and its officers, representatives, agents and employees, directly or indirectly, or through any corporate or other device, in connection with the sale of fruits, fruit products or vegetables 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 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 its said products to such buyer for his own account; or

2. Selling any of said products to a buyer at a price reflecting a reduction from the price at which sales of such products are currently being made by respondent to others, where such reduction is in lieu of brokerage or any part or percentage thereof.

It is further ordered, That respondents Ballentine Produce, Inc., a corporation, and Hugh B. Campbell, Inc., a corporation, their officers, and respondents Harrell H. Ballentine, Herman Ballentine, and Ludell Ballentine, individually and as officers of Ballentine Produce, Inc., Hugh B. Campbell, Robert Recken and Mary A. Campbell, individually and as officers of Hugh B. Campbell, Inc., Oscar L. Davis, Jr., individually and trading as O. L. Davis Brokerage Company, or trading under any other name, and their respective representatives, agents and employees, directly or through any corporate or other device in connection with the purchase of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon any purchase of food products by or for their own accounts or for the account of any buyer for whom they are individually or collectively acting as agents, representatives or intermediaries who are subject to the direct control of said buyer.

It is further ordered, That the complaint be and it hereby is dismissed as to respondent Mrs. Oscar L. Davis, Sr.

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 26th day of February 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents American National Growers Corporation; Ballentine Produce, Inc.; Hugh B. Campbell, Inc.; Harrell H. Ballentine; Herman Ballentine; Ludell Ballentine; Hugh B. Campbell; Robert Recken; Mary A. Campbell; and Oscar L. Davis, Jr., 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.

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IN THE MATTER OF
MAX FACTOR & CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7280. Complaint, Oct. 15, 1958—Decision, Feb. 26, 1959

Consent order requiring a cosmetic house in Hollywood, Calif., to cease representing falsely by television, magazine, and other advertising that its "Natural Wave" spray would change the structure of naturally straight hair to naturally curly.

Mr. John T. Walker for the Commission.

Mr. Raymond S. Smethurst, of Washington, D.C., and *Mr. Ralph E. Lazarus*, of Los Angeles, Calif., for respondent.

INITIAL HEARING BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued October 15, 1958, charges the respondent with violation of the Federal Trade Commission Act in the sale and distribution of a cosmetic preparation designated "Natural Wave."

Respondent Max Factor & Co. is a corporation organized, existing and doing business under the laws of the State of Delaware, with its office and principal place of business located at 1655 North McCadden Place, Hollywood, Calif.

After the issuance of the complaint, respondent entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the acting director and assistant director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

By the terms of said agreement, the respondent admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the respondent expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights it may have to challenge or contest the validity