

Decision

55 F.T.C.

IN THE MATTER OF
INDEPENDENT SALMON CANNERIES, INC., ET AL.

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

Docket 7201. Complaint, July 22, 1958—Decision, Mar. 24, 1959

Order requiring Seattle packers of salmon and other sea food products acting also as primary brokers for other packers, to cease violating the brokerage section of the Clayton Act by such practices as granting certain buyers or their agents reductions in price which were offset in whole or in part by a reduction of the field broker's commission, and granting price concessions which reflected brokerage on direct sales.

Mr. Cecil G. Miles for the Commission.

Mr. Josef Diamond, of *Lycette, Diamond & Sylvester*, 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 respondents have paid, granted or allowed something of value as commission, brokerage, or other compensation, or allowance or discount in lieu thereof, in connection with the sale of their seafood products or those of their packer-principals, 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, said buyers.

The complaint was issued on July 22, 1958, and from the record it appears that respondents were duly served with a copy of said complaint; that they never filed an answer or other pleading and have long been in default of answer or any other appearance, except as to a letter dated October 29, 1958, by counsel above named, asking for an earlier setting or a postponement of the initial hearing herein; that due service was made upon such counsel pursuant to the Commission's Rules of Practice for Adjudicative Proceedings of the order setting this proceeding for November 25, 1958, in Seattle, Washington, for the purpose of hearing the evidence to be presented by counsel supporting the complaint to find whether or not the facts as against said respondents are as alleged in the complaint, to make proper findings on the evidence presented, and to determine the form of order to be issued against said respondents under said

complaint and evidence in the initial decision to be rendered herein as to said respondents.

On November 25, 1958, at the time and place designated therefor, the hearing examiner appeared to conduct such a hearing, counsel supporting the complaint appeared, and counsel for respondents also appeared with a request that the hearing be set over to November 28, 1958, at 10:00 a.m., at the same place, in order for him to obtain instructions from his client, which request was granted. But on that date, just before the hearing, counsel for respondents advised by telephone that he had no further instructions from his clients and to proceed with the hearing. Accordingly the hearing examiner conducted this hearing as scheduled, at which counsel for respondents did not appear; respondents being long in default of answer, and, on motion of counsel supporting the complaint, their default was taken and entered of record by the hearing examiner. Hearing then proceeded upon the presentation made by the attorney for the Commission who requested that findings be made against said respondents in accordance with the allegations of the complaint and that order be issued against said respondents. The proceeding was then taken under advisement.

Upon due consideration of the whole record herein and the hearing examiner being fully advised in the premises, it is found as follows:

1. Respondent Independent Salmon Canneries, Inc., hereinafter sometimes referred to 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 Pier 66, Seattle Wash. Respondent has been for the past several years and is now engaged in packing, selling, and distributing canned and cured fish, including canned salmon, all of which are hereinafter referred to as seafood products, and is a substantial distributor of said products. Respondent also acts as primary broker for a number of packer-principals, in connection with the sale and distribution of their seafood products.

2. Respondent Bernard D. Oxenberg is an individual and is vice president of the corporate respondent named herein. Individual respondent Oxenberg and the Oxenberg family own a substantial majority of the outstanding capital stock of the corporate respondent. As vice president and substantial owner, as described above, respondent Oxenberg exercises authority

Decision

55 F.T.C.

and control over the corporate respondent and its business activities, including the direction of its sales and distribution policies.

3. In the course and conduct of their business, respondents, both corporate and individual, have sold and distributed, and are now selling and distributing seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, to buyers located in the several states of the United States, other than the state in which respondents are located. Said respondents transport, or cause such seafood products, when sold, to be transported from their place of business or warehouses, or the place of business or warehouses of their packer-principals, in the State of Washington or elsewhere, to buyers or to said buyers' customers 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 seafood products across state lines between respondents and the respective buyers of said products.

4. Respondents, both corporate and individual, for the past several years have sold and distributed, and are now selling and distributing their seafood products in commerce, as well as those of their packer-principals, to customers located in the several states of the United States, generally through field brokers. When acting as primary brokers for their packer-principals in negotiating sales for them, respondents generally receive for their services a brokerage or commission usually at the rate of 5 percent of the net selling price of the merchandise. When respondents utilize the services of field brokers, they usually pay them a brokerage or commission at the rate of $2\frac{1}{2}$ percent of the net selling price of the merchandise.

5. In the course and conduct of their business in commerce, either as distributor of their own seafood products or as primary brokers for their packer-principals, or in both capacities, respondents have made grants or allowances in substantial amounts in lieu of brokerage, or have made price concessions which reflect brokerage to certain buyers of said seafood products.

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

(a) Granting or allowing to certain buyers, or agents of buyers, reductions in prices which were coupled with or were off-set in whole or in part by a reduction of the field broker's commission or brokerage fee on said sales;

1542

Order

(b) Granting discounts or price concessions which reflect brokerage where no brokers are utilized in connection with said sales.

CONCLUSIONS OF LAW

There being jurisdiction over the persons of respondents, upon the findings herein made, the allegations of the complaint, and the presentation of counsel supporting the complaint, the hearing examiner upon the whole record makes the following conclusions of law:

1. The Federal Trade Commission has jurisdiction over all of the respondents' acts and practices herein found to be unlawful.
2. The public interest in this proceeding is clear, specific, and substantial.
3. The aforesaid acts and practices of respondents, both corporate and individual, as herein found, were and are all in violation of §2(c) of the Clayton Act, as amended (U.S.C., Title 15, §13).

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That Independent Salmon Canneries, Inc., a corporation, and its officers, and Bernard D. Oxenberg, individually and as an officer of respondent corporation, and respondents' 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 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.
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 respondents on sales made for their 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

55 F.T.C.

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 24th day of March 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.

Decision

IN THE MATTER OF
EASTERN METAL PRODUCTS CORPORATION, ET AL.

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

Docket 7294. Complaint, Nov. 5, 1958—Decision, Mar. 24, 1959

Consent order requiring distributors of electrical appliances—including irons, cooker-fryers and skillet-casseroles—in Tuckahoe, N.Y., to cease representing falsely in advertising material disseminated to customers for use in resale, in newspaper advertising, on attached tags and labels, and on cartons packaging its products, that exaggerated prices were the regular retail prices; by use of the Good Housekeeping Seal of Approval, that its products had been approved and guaranteed by Good Housekeeping Magazine and advertised therein; and through use of the name "General Electric" that the products were manufactured by General Electric Company.

Mr. Terral A. Jordan for the Commission.

Respondents, for themselves.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 5, 1958, charging respondents with violation of the Federal Trade Commission Act by the use of false and misleading statements and representations as to prices, the Good Housekeeping Seal of Approval, and the name "General Electric," contained in or appearing on advertising material prepared and disseminated by respondents in connection with the sale and distribution in commerce of their electrical appliances, including irons, cooker-fryers and skillet-casseroles.

Thereafter, on January 19, 1959, respondents and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Eastern Metal Products Corporation as a New York corporation, and respondents Arnold Troy and Seymour Troy as individuals and president and vice president, respectively, of said corporate respondent; all respondents having their office and principal place of business located at 135 Marbledale Road, Tuckahoe, N.Y.