

Complaint

55 F.T.C.

IN THE MATTER OF
EASTERN CANNERS, INC., ET AL.

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

Docket 7423. Complaint, Feb. 26, 1959—Decision, June 16, 1959

Consent order requiring a distributor of canned fruits and vegetables and other grocery items in Glenside, Pa., to cease violating Sec. 2(c) of the Clayton Act by receiving and accepting from suppliers on purchases for its own account for resale, allowances or discounts in lieu of brokerage ranging from 1½% to 4% of the net purchase price.

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 Eastern Canners, 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 Pennsylvania, with its principal office and place of business located at 25 South Easton Road, Glenside, Pa., with mailing address as P. O. Box 161, Jenkintown, Pa.

Respondent corporation is now and for the past several years has been engaged primarily in the business of buying and selling canned fruits, canned vegetables and many other grocery items, all of which are hereinafter referred to as food products. Respondent has a substantial distribution of such food products, with a sales volume substantially in excess of \$2,000,000 annually.

PAR. 2. Respondent Dill Wattis, Jr., is an individual and is president and treasurer of the corporate respondent named herein, with his principal office and place of business the same as that of the corporate respondent. Respondent Dill Wattis, Jr., owns a majority of the outstanding capital stock of the corporate respondent and as president and majority stockholder, as described above, exercises authority and control over the corporate respondent and its business activities, including its purchase, sales and distribution policies.

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PAR. 3. In the course and conduct of their business for the past several years, respondents, both corporate and individual, have purchased and are now purchasing food products in commerce, as "commerce" is defined in the aforesaid Clayton Act from sellers located in several States of the United States other than the state in which respondents are located, and have resold said food products to customers likewise located in States other than the State in which respondents are located. Said respondents transport, or cause such food products, when purchased or resold, to be transported from the places of business of their respective suppliers, or sellers, to their own place of business, or to the places of business of respondents' 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 food products across State lines between respondents and their suppliers and also between respondents and their said buyers of said food products.

PAR. 4. In the course and conduct of their business in commerce as aforesaid, respondents have made and are now making substantial purchases for their own account from various packers or sellers on which purchases respondents, both corporate and individual, have received and accepted, and are now receiving and accepting, directly or indirectly, something of value as commissions, brokerage fees or other compensation, or allowances or discounts in lieu thereof, from said sellers. These brokerage fees, commissions, discounts or allowances received by respondents on their own purchases for resale range from $1\frac{1}{2}\%$ to 4% of the net purchase price of the merchandise, depending on the particular product or the seller involved.

PAR. 5. The foregoing acts and practices of respondents, both corporate and individual, as hereinabove alleged and described, violate 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.

Ballard, Spahr, Andrews & Ingersoll, by *Mr. Frederick L. Ballard, Jr.*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On February 26, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of subsection (c) of Section 2 of

the Clayton Act, as amended. An April 29, 1959, the respondents and their attorney and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding as to all parties, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Eastern Cannery, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 25 South Easton Road, in the city of Glenside, State of Pennsylvania, with mailing address as P. O. Box 161, Jenkintown, Pa.

Respondent Dill Wattis, Jr., is an individual and is an officer of respondent corporation with his office and principal place of business located at 25 South Easton Road, in the city of Glenside, State of Pennsylvania, with mailing address as P. O. Box 161, Jenkintown, Pa.

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

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named. The complaint states a cause of action against said respondents under the Clayton Act, as amended.

ORDER

It is ordered, That Eastern Canners, Inc., a corporation, and its officers, and Dill Wattis, Jr., 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 purchase and resale of food products or other commodities 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 or in connection with any purchase of food products or other commodities for their own account, or while acting for or on behalf of any buyer as an intermediary or agent, or subject to the direct or indirect control of such buyer.

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 16th day of June 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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.

IN THE MATTER OF
MAX LESSER TRADING AS CAMP NOVELTY CO.

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

Docket 7410. Complaint, Feb. 16, 1959—Decision, June 17, 1959

Order dismissing, following death of respondent and liquidation of business, complaint charging a New York City manufacturer with stamping as "genuine leather," wallets made of split leather and other material, and with selling the wallets to jobbers and retailers preticketed with fictitious prices.

Mr. Michael J. Vitale for the Commission.
No appearance on behalf of respondent.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On February 16, 1959, the Federal Trade Commission issued its complaint against the above-named respondent. On April 14, 1959, counsel supporting the complaint filed a motion to dismiss the complaint because of the death of the respondent and the liquidation of his business in 1958. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of June 1959, become the decision of the Commission.