

Complaint

IN THE MATTER OF
ALTON CANNING COMPANY, INC., ET AL.

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

Docket 7265. Complaint, Sept. 30, 1958—Decision, June 20, 1959

Consent order requiring an Alton, N.Y., canner of fruits and vegetables to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as selling its products to some purchasers at prices from 2% to 14% higher than those at which it sold to favored buyers, including a purchaser for resale to large grocery chains.

COMPLAINT

The Federal Trade Commission, having reason to believe that the named respondents have violated and are now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act approved June 19, 1936 (U.S.C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Alton Canning Company, Inc. (hereinafter sometimes referred to as Alton Canning Company), is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 315 Alexander Street, Rochester, N.Y. Individual respondents Edward E. Burns and Morton Adams are now, and were during all times hereinafter stated, officers and directors of said corporate respondent. These individual respondents are and have been controlling and directing the operations of corporate respondent during the period from 1955 to the present.

PAR. 2. Respondent Alton Canning Company, Inc., is now, and for many years past has been, engaged in the business of packing, selling and distributing canned fruits and vegetables, particularly applesauce, cherries, green beans, wax beans, beets, frozen cherries and some tomato juice. It maintains one canning plant at Alton, N.Y., with an auxiliary plant at Sodus, N.Y., for freezing fruits. Respondent distributes and sells its canned fruits and vegetables primarily under the private labels or brands of its purchasers, although it also distributes and sells such canned fruits and vegetables under its own labels or brands.

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Said respondent is a substantial factor in the distribution and sale of canned fruits and vegetables, selling such commodities to numerous buyers located in the various sections of the United States. Its net sales in 1956 amounted to approximately \$2,-963,000.00.

PAR. 4. Respondent Alton Canning Company, Inc., sells and distributes its canned fruits and vegetables primarily through two separate and distinct methods, namely: (1) by selling, through brokers, some of such canned fruits and vegetables to buyers, principally wholesale grocers and retail chain grocers; (2) by selling some of such canned fruits and vegetables to C. F. Burns & Son Co., Inc., who in turn resells such products exclusively to the Great Atlantic & Pacific Tea Company, Safeway Stores, Inc., and The Kroger Company.

PAR. 5. Respondent Alton Canning Company, Inc., has sold and distributed, and now sells and distributes, its canned fruits and vegetables to buyers located in the several States of the United States, including the District of Columbia. Respondent, in the sale of such canned fruits and vegetables, has at all times relevant herein been and now is engaged in commerce, as "commerce" is defined in the amended Clayton Act.

PAR. 6. In the course and conduct of its business in commerce, respondent Alton Canning Company, Inc., is now, and during the period mentioned herein has been, directly or indirectly, in active and substantial competition with other corporations, partnerships, firms and individuals engaged in the canning, sale and distribution in commerce of canned fruits and vegetables.

Many of respondent's purchasers are likewise directly or indirectly in competition with each other.

PAR. 7. In the course and conduct of its business in commerce, respondent Alton Canning Company, Inc., has been, and is now, discriminating in price between purchasers of commodities of like grade and quality. 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.

Alton Canning Company has sold, and now sells, its commodities to some purchasers at prices approximately 2% to approximately 14% higher than the prices at which it has sold and now sells commodities of like grade and quality to some of its favored purchasers.

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Alton Canning Company's said favored purchasers are now competing and have been competing from 1955 to the present time, directly or indirectly, with respondent's nonfavored purchasers. Furthermore, during this period, many of the customers of respondent's nonfavored purchasers are competing and have been competing with either the favored purchasers, or with customers of the favored purchasers.

PAR. 8. Specific examples of discriminations in price of certain commodities of like grade and quality sold by respondents to their competing favored and nonfavored buyers are as follows, to wit:

1. Fancy Sliced Beets—24/303

4- 4-57 C. F. Burns & Son Co., Inc.....	\$.88 per dozen
4-10-57 Mid-Eastern Cooperatives, Inc.....	1.00 per dozen
2. Fancy Cut Green Beans 4 Sieve—24/303

9-26-57 C. F. Burns & Son Co., Inc.....	\$1.23 per dozen
9-28-57 Reeves Parvin & Co.....	1.45 per dozen
3. Fancy Sliced Beets—24/303

10-16-56 American Stores Co.....	\$1.15 per dozen
10- 3-56 Leedom & Worrall Co.....	1.25 per dozen

PAR. 9. C. F. Burns & Son Co., Inc., has resold the products so purchased from respondents to the Great Atlantic & Pacific Tea Company and Safeway Stores, Inc., at prices lower than the prices paid respondents by wholesalers whose customers compete with the Great Atlantic & Pacific Tea Company and Safeway Stores in the resale of such products to the consuming public. For example, certain of the cans of Fancy Sliced Beets referred to above were resold by C. F. Burns & Son Co., Inc., to A & P and Safeway at \$.90 per dozen.

Respondent Edward E. Burns is the president and treasurer and respondent Morton Adams is the vice president of C. F. Burns & Son Co., Inc. This company and respondent Alton Canning Company, Inc., have common officers and directors. All of the stockholders of C. F. Burns & Son Co., Inc., are stockholders of respondent Alton Canning Company, Inc. These common stockholders own 960 of the 1,000 outstanding shares of common stock in respondent Alton Canning Company, Inc.

PAR. 10. The effect of respondents' discriminations in price, as above alleged, may be substantially to lessen, injure, destroy or prevent competition between: (1) favored and nonfavored purchasers; (2) customers of the favored and nonfavored purchasers;

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(3) favored purchasers and customers of the nonfavored purchasers.

PAR. 11. The acts and practices of respondents, as above alleged, constitute violations of the provisions of subsection (a) 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.

Mr. Jerome Garfinkel for the Commission.

Mr. Joseph J. Smith, Jr., of Washington, D.C., and *Harris, Beach, Keating, Wilcox, Dale and Linowitz*, by *Mr. Harlan F. Calkins*, of Rochester, N.Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on September 30, 1958, charging respondents with discriminations in price in the sale and distribution of their canned fruits and vegetables, in violation of §2(a) of the Clayton Act (U.S.C., Title 15, §13), as amended by the Robinson-Patman Act, approved June 19, 1936.

Thereafter, on April 14, 1959, respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Alton Canning Company, Inc., as a New York corporation, with its office and principal place of business located in the city of Alton, State of New York, and respondent Edward E. Burns as an individual and president of the said corporate respondent, with his office and principal place of business located in the same city.

Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint

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and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement 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.

All parties further agree that the complaint should be dismissed as to Morton Adams, named in the complaint individually and as an officer of respondent corporation, in view of the fact that he made no policy decisions concerning the operations of said respondent corporation.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondents Alton Canning Company, Inc., a corporation, and Edward E. Burns, individually and as an officer of corporate respondent, directly or through any corporate or other device, in connection with the sale of their canned fruits and vegetables in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Discriminating in the price of such products of like grade and quality:

1. By selling to any purchaser at net prices higher than the net prices charged to any other purchaser who in fact competes with the purchaser paying the higher price in the resale and distribution of respondents' products;

2. By selling to any purchaser at net prices higher than the net prices charged to any other purchaser whose customers in fact compete with the customers of the purchaser paying the higher price in the resale and distribution of respondents' products;

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3. By selling to any purchaser at net prices lower than the net prices charged to any other purchaser whose customers in fact compete with the purchaser paying the lower price in the resale and distribution of respondents' products.

It is further ordered, That the complaint be dismissed as to Morton Adams.

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 20th day of June 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Alton Canning Company, Inc., a corporation, and Edward E. Burns, individually and as an officer of said Alton Canning Company, Inc., 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
MIDWEST INDUSTRIAL SUPPLY, INC., ET AL.

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

Docket 7413. Complaint, Feb. 16, 1959—Decision, June 20, 1959

Consent order requiring a St. Paul, Minn., concern to cease selling vending and radio tube testing machines through false employment offers in newspaper advertising, exaggerated earnings claims, misrepresentations of exclusive territories and established sales routes, assistance to customers, etc.

Mr. Garland S. Ferguson for the Commission.

Mr. Carl F. Dever, of Minneapolis, Minn., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On February 16, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the sale of vending and other machines, including machines for vending cigarettes and coffee and for testing radio tubes. On April 15, 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.