

It is further ordered, That the respondent Symon Gould shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order contained in said initial decision.

IN THE MATTER OF
F. E. BOOTH COMPANY, INC.

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

Docket 7438. Complaint, Mar. 12, 1959—Decision, Aug. 4, 1959

Consent order requiring a San Francisco processor and canner of fish, fruits, and vegetables, to cease violating Sec. 2(c) of the Clayton Act by giving discounts or allowances reflecting the usual 2½% brokerage fee, to customers buying directly for their own accounts.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has been and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent F. E. Booth Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada with its principal office and place of business located at 280 Battery Street, San Francisco, California. It is engaged in the business of purchasing, processing, canning, and selling fish, fish products, fruits, and vegetables. It has annual net sales of approximately \$8,000,000.

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PAR. 2. Respondent sells its food products on a nationwide basis, sometimes through brokers to which it pays commissions of $2\frac{1}{2}\%$ and sometimes directly to large food chain retailers.

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

PAR. 4. In the course and conduct of its said business in commerce, respondent is now and has been in competition with other corporations, partnerships, individuals, and firms engaged in purchasing, processing, canning, and selling fish, fish products, fruits, and vegetables.

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

PAR. 5. In the course and conduct of its business as above-described, respondent F. E. Booth Company, Inc., 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 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 1957 respondent F. E. Booth Company, Inc., granted discriminatory allowances as described above in connection with purchases of respondent's products made for their own accounts to Regent Canfood Company of San Francisco, California (a wholly owned buying subsidiary of Safeway Stores, Inc.), The Great Atlantic & Pacific Tea Company of New York, New York, and The Kroger Company of Cincinnati, Ohio, part of which allowances were made in lieu of the $2\frac{1}{2}\%$ brokerage fee paid by respondent when others of its customers make similar purchases through brokers.

PAR. 6. The acts and practices of the respondent F. E. Booth Company, Inc., as alleged above, violate subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Fredric T. Suss for the Commission.

Chickering & Gregory, by *Mr. W. Burleigh Pattee* and *Mr. John P. MacMeeken*, of San Francisco, Calif., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on March 12, 1959, charging respondent with violating §2(c) of the Clayton Act (U.S.C. Title 15, §13), as amended by the Robinson-Patman Act, approved June 19, 1936, by paying or granting, directly or 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 in their own names and for their own accounts for resale.

Thereafter, on June 4, 1959, respondent, its 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 F. E. Booth Company, Inc. as a Nevada corporation, with its principal office and place of business located at 280 Battery Street, San Francisco, California.

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

Respondent waives 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 it 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 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 Respondent that it has violated the law as alleged in the complaint.

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 respondent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent F. E. Booth Company, Inc., a corporation, its officers, representatives, agents or employees, directly or through any corporate or other device, in connection with the sale and distribution of canned foods, or other food products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting or allowing, directly or indirectly, to any buyer, or anyone acting for or in behalf of, or who is subject to, the direct or indirect control of such buyers, 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 to such buyer for its own account.

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 4th day of August, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That Respondent F. E. Booth Company, Inc., a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.