

10 to 15 days; that 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
BERCUT-RICHARDS PACKING COMPANY, INC.

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

Docket 7651. Complaint, Nov. 3, 1959—Decision, Apr. 27, 1960

Consent order requiring a Sacramento, Calif., canner of fruits, vegetables, and juices—with annual sales exceeding \$12,000,000—to cease violating Sec. 2(d) of the Clayton Act by paying favored purchasers advertising allowances which were not made available on proportionally equal terms to all their competitors.

COMPLAINT

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

PARAGRAPH 1. Respondent, Bercut-Richards Packing Company, Inc., is a corporation organized, existing, and doing business under

and by virtue of the laws of the State of California, with its office and principal place of business located at North Seventh Street and Richards Avenue, Sacramento, California.

PAR. 2. Respondent is now and has been engaged in the business of selling and distributing a wide variety of canned food products, including fruits, vegetables, tomato juice and other juices, all of which it processes and cans at its plant in Sacramento, California. Respondent sells and distributes its canned food products under the private labels or brands of its purchasers, and also under its own labels or brands.

Respondent sells its products through brokers, and also directly to wholesalers and retailers, including retail chain store organizations. Sales made by respondent of its products are substantial, exceeding \$12,000,000 annually.

PAR. 3. In the course and conduct of its business respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from the respondent's principal place of business, located in California, to customers located in other states of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, since January 1, 1956, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, during the year 1956, respondent contracted to pay and did pay to Seeman Brothers, Inc., a wholesaler in New York, New York, \$1,000 as compensation or as allowances for advertising or other service or facility furnished by or through Seeman Brothers, Inc., in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with Seeman Brothers, Inc., in the sale and distribution of products of like grade and quality from respondent.

PAR. 6. The acts and practices of respondent, as alleged above, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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Order

Mr. Fredric T. Suss and *Mr. John Perechinsky* for the Commission.

Mr. Robert R. Harlan, of Sacramento, Calif., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated November 3, 1959, the respondent is charged with violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

On February 16, 1960, the respondent and its attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondent admits 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 have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it 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.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Bercut-Richards Packing Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at North Seventh Street, in the City of Sacramento, State of California.

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

ORDER

It is ordered, That respondent Bercut-Richards Packing Company, Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connec-

tion with the sale of canned food products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Making, or contracting to make, to, or for the benefit of, any customer any payment of anything of value as compensation or in consideration for any advertising or other service or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale, of products sold to him by respondent, unless such payment is affirmatively offered or otherwise made available to all competing customers on proportionally equal terms.

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 27th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered. That the respondent herein 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.
