
IN THE MATTER OF
KOLSTAD CANNERIES, INC., ET AL.

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

Docket 7807. Complaint, Mar. 4, 1960—Decision, Oct. 22, 1960

Consent order requiring a canner of fruits and vegetables in Silverton, Ore., to cease discriminating in price in violation of the Clayton Act by such practices as granting some wholesalers in Seattle and Yakima, Wash., substantially lower prices than their competitors—charging at least one large grocery chain in the Seattle area much less than some wholesalers whose retailer-customers competed with the chain's outlets—thus violating Sec. 2(a); and by paying some direct-buying wholesale grocers so-called advertising allowances of 2½ and 3%, which were actually discounts in lieu of brokerage, thus violating Sec. 2(c).

Complaint

57 F.T.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties named in the caption hereof have been and are now violating the provisions of subsections (a) and (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Kolstad Canneries, Inc., sometimes hereinafter referred to as respondent corporation or as corporate respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at Front and D Streets (P.O. Box 67), Silverton, Oregon.

Respondent corporation is now, and for the past several years has been, engaged in business as a canner or packer, seller and distributor of fruits and vegetables, such as Blue Lake beans, corn, pumpkin and purple plums, with the bulk of its canning activities in Blue Lake beans. All of these items are hereinafter referred to as food products.

PAR. 2. Respondent Leonard E. Kolstad, hereinafter referred to as respondent Kolstad or as the individual respondent, is an individual and is president, manager, and majority stockholder of the corporate respondent named herein, with his principal office and place of business the same. Respondent Kolstad, along with his wife and brother, is also a partner in the L. E. Kolstad Brokerage Company operated from the same address as that of Kolstad Canneries, Inc.

PAR. 3. Respondents, both corporate and individual, sell and distribute their food products of like grade and quality to a large number of purchasers located in various states of the United States other than the State of Oregon. Respondents ship or cause the said food products, when sold, to be shipped from respondents' canning plant or warehouse located in Silverton, Oregon, to purchasers located in other states. Thus there has been at all times mentioned herein a constant current of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, between the respondents named herein and the purchasers of these food products.

PAR. 4. In the course and conduct of their business in commerce as aforesaid, respondents have in the past and are at the present time selling their food products of like grade and quality to wholesale grocers who resell said products to retail grocers for sale to the consumer. Respondents also sell said food products of like grade and

quality to at least one large retail grocery chain. Many of respondents' wholesale purchasers are engaged in competition with each other in the sale and distribution of said food products, and this large retail grocery chain is engaged in competition with many of the customers of some of the wholesale purchasers of respondents' food products. The food products mentioned herein are sold for use, consumption, or resale within the United States.

PAR. 5. In the course and conduct of their business as alleged herein, respondents have in the past and are at the present time discriminating in prices charged to various purchasers of their food products by charging substantially higher prices to some of their purchasers than they do to other purchasers for food products of like grade and quality.

For example, respondents sold large quantities of their food products of like grade and quality to some wholesale purchasers in Seattle and Yakima, Washington, at prices substantially lower than the prices charged other wholesale purchasers competing in these areas with the wholesale purchasers paying the lower prices for products of like grade and quality. During this same period of time respondents have likewise made sales of their food products of like grade and quality to at least one large retail grocery chain in the Seattle, Washington, area at prices substantially lower than those charged some, but not all, wholesale purchasers in that area who resell to retail customers competing with many of the retail outlets of the chain.

The discrimination in prices mentioned above is not a fixed and certain amount, but varies from time to time, and also varies as between or among the many purchasers from respondent.

PAR. 6. The effect of such discriminations in price, as herein alleged, has been or may be substantially to lessen competition in the lines of commerce in which respondents and their customers are respectively engaged, or to injure, destroy, or prevent competition between respondents' favored and non-favored wholesale purchasers, and between respondents' favored retail chain purchaser and the customers of respondents' non-favored wholesale purchasers competing with said retailer.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged constitute a violation of subsection (a) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

COUNT II

PAR. 8. The allegations of paragraphs 1 through 4 of Count I of this complaint are hereby adopted and incorporated in Count II, and

made a part hereof by reference the same as if they were repeated here verbatim.

PAR. 9. The major part of respondents' food products is sold and distributed through brokers, generally located in the various selling areas of the United States where the customers are located, and for their services in connection with these sales said brokers are paid a brokerage fee or commission, usually at the rate of $2\frac{1}{2}$ percent or 3 percent of the net selling price of the merchandise, depending on the section of the country in which the broker operates. The practices of respondents as hereinafter described are separate from and in addition to the practices outlined in Count I of this complaint.

PAR. 10. In the course and conduct of their business as aforesaid, respondents, both corporate and individual, acting either through the corporate respondent named herein, or through the L. E. Kolstad Brokerage Company, sell and distribute their food products in substantial quantities to at least two wholesale grocers direct, without utilizing the services of brokers in their respective general areas, and on these sales respondents have paid, granted or allowed to said customers, discounts or allowances in lieu of brokerage. These discounts are paid to these two customers by way of a so-called advertising allowance in the amount of $2\frac{1}{2}$ percent to one customer, and 3 percent to the other, both deducted from the face of the invoices at the time of billing, with no proof of advertising required of the customers in order to get the allowance. This discount or allowance is the usual rate of brokerage paid by respondents to brokers in the respective general areas of these two customers. It is not a true advertising allowance but is merely designated as such to avoid disclosing its real purpose. It is, therefore, alleged that this so-called advertising allowance is nothing but a discount in lieu of brokerage and was intended as such by respondents.

PAR. 11. The acts and practices of respondents, both corporate and individual, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles for the Commission.

Goodenough, Clark & Marsh, by *Mr. Malcolm F. Marsh*, of Salem, Oreg., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated March 4, 1960, the respondents are charged with violating the provisions of subsections (a) and (c) of Section 2 of the Clayton Act, as amended.

On August 16, 1960, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

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 have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents 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 respondents that they have 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 Kolstad Canneries, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at Front and D Streets (P.O. Box 67), in the City of Silverton, State of Oregon.

Respondent Leonard E. Kolstad is an individual and is an officer of respondent corporation with his office and principal place of business located at Front and D Streets (P.O. Box 67), in the City of Silverton, State of Oregon.

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

ORDER

It is ordered, That respondents Kolstad Canneries, Inc., a corporation, and its officers, and Leonard E. Kolstad, individually and as an officer of said respondent corporation, and respondents' agents, representatives and employees, directly or through any corporate, partnership, or other device, in connection with the sale and distribution of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from

discriminating, directly or indirectly, in the price of food products of like grade and quality:

1. By selling at different prices to wholesalers who compete with each other in the resale and distribution of such food products; and
2. By selling to any retailer at prices lower than prices charged any wholesaler who competes, or whose customers compete, with such retailer in the sale and distribution of such food products.

It is further ordered. That respondents Kolstad Canneries, Inc., a corporation, and its officers, and Leonard E. Kolstad, individually and as an officer of said respondent corporation, and respondents' agents, representatives and employees, directly or through any corporate, partnership (including the L. E. Kolstad Brokerage Company), or any other device, in connection with the sale and distribution of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf, or 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 the sale of food products to such buyer for his 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 22d day of October 1960, 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

ATLAS SEWING CENTERS, INC., ET AL.

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