

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 28th day of April 1961, become the decision of the Commission; and, accordingly:

*It is ordered*, That De'Cor Furs, Inc., a corporation, and its officers, and Sol Morgenstein and Burton Hammer, individually and as officers of said corporation, 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  
IDAHO CANNING CO. (LTD.)

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

*Docket 7495. Complaint, May 15, 1959—Decision, May 2, 1961*

Consent order requiring a Payette, Idaho, processor of fruits and vegetables to cease violating Sec. 2(a) of the Clayton Act by charging competing customers different prices for like products, and violating Sec. 2(d) by granting advertising allowances to some purchasers but not to their competitors, such as a payment of \$350 to a Portland, Oreg., retail chain for participation in its 1957 coupon book promotion and reimbursing the chain 12.1¢ for each coupon redeemed, with net effect of giving it the value of one can for every two purchased.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent has violated and is now violating Sections 2(a) and 2(d) of the amended Clayton Act (15 U.S.C., Section 13), hereby issues its complaint as follows:

COUNT I

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 24 North Sixth in Payette, Idaho.

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PAR. 2. Respondent is principally engaged in the processing, canning, and sale of various fruits and vegetable items such as whole kernel or cream style corn, in a variety of sizes under company owned and private labels.

Respondent's total sales for the fiscal year 1958 were in excess of \$300,000.

PAR. 3. These products are sold by respondent for use, consumption, or resale within the United States and respondent causes them to be shipped and transported from the State or location of its canning plant to purchasers located in States other than the State in which the shipment or transportation originated.

Respondent maintains a course of trade in commerce, as "commerce" is defined in the amended Clayton Act, in such products among and between the States of the United States.

PAR. 4. Respondent maintains and operates a canning plant in Nyssa, Oregon. From this plant it ships and sells throughout the United States directly to various purchasers in the several States of the United States.

PAR. 5. Respondent, in the course and conduct of its business in commerce, is competitively engaged with other corporations and with individuals, partnerships, and firms in the sale of the products mentioned.

PAR. 6. Respondent, in the course and conduct of its business in commerce, is discriminating in price between different purchasers of its products of like grade and quality by selling to some purchasers at higher and less favorable prices than it sells to other purchasers competitively engaged in the resale of its products with the non-favored purchasers.

For example, respondent participates annually in the coupon book promotion of Fred Meyer Inc., a retail chain in Portland, Oregon. In 1957 respondent sold to Fred Meyer, Inc., about 4,000 cases of canned whole kernel or cream style corn. Respondent reimbursed Fred Meyer, Inc., for all coupons redeemed during the 1957 promotion at the rate of 12.1 cents each, the net effect of which was to pay Fred Meyer, Inc., the value of one can of corn for every two cans actually purchased.

Respondent did not grant a similar allowance, rebate, or discount to non-favored purchasers who compete in the resale of respondent's product with Fred Meyer, Inc.

PAR. 7. The effect of respondent's discriminations in price as alleged may be substantially to lessen, injure, destroy, or prevent competition or tend to create a monopoly in the lines of commerce which respondent and its customers are engaged.

PAR. 8. The foregoing acts and practices of the respondent as alleged violate Section 2(a) of the amended Clayton Act (15 U.S.C., Section 13).

## COUNT II

PAR. 9. Each of the allegations contained in Paragraphs One through Five of COUNT I hereof are hereby realleged and made part of this count as fully and with the same effect as though herein again set forth in full.

PAR. 10. In the course and conduct of its business in commerce, 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 or allowances were not made available on proportionally equal terms to all other customers competing in the distribution of its products.

For example, respondent agreed to participate in the coupon book promotion of Fred Meyer, Inc., of Portland, Oregon, by paying \$350 cash for its participation.

Respondent did not offer or make available on proportionally equal terms such an allowance to other customers competing in the resale of respondent's products with the customer receiving such allowance.

PAR. 11. The acts and practices of respondent as alleged above violate Section 2(d) of the amended Clayton Act (15 U.S.C., Section 13).

*Mr. Franklin A. Snyder* for the Commission.

*Mr. Vernon Daniel*, of Payette, Idaho, for respondent.

## INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On May 15, 1959, the Federal Trade Commission issued its complaint against the above-named respondent charging it with violating the provisions of subsections (a) and (d) of section 2 of the Clayton Act, as amended, in connection with the processing, canning and sale of various fruits and vegetable items such as whole kernel or cream style corn. On February 8, 1961, the respondent 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 respondent admits the jurisdictional facts alleged in the complaint and agrees, among other

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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 respondent 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, does not constitute an admission by the respondent that it has violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order. 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.

The complaint insofar as it concerns the allegation of "primary line injury", namely, to substantially lessen competition or tend to create a monopoly in the line of commerce in which the respondent is engaged, should be dismissed on the grounds that the evidence in the light of subsequent developments is insufficient to substantiate the allegation.

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, 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 Idaho Canning Co. (LTD) is a corporation existing and doing business under and by virtue of the laws of the State of Idaho, with its office and principal place of business located at 24 North Sixth Street, in the City of Payette, State of Idaho.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under subsections (a) and (d) of section 2 of the Clayton Act, as amended.

## ORDER

*It is ordered.* That respondent Idaho Canning Co. (LTD), a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in, or in connection with, the sale of food products in commerce, as "commerce" is de-

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fined in the amended Clayton Act, do forthwith cease and desist from:

1. Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes in the resale and distribution of respondent's products with the purchaser paying the higher price; and

2. Paying, or contracting for the payment of, anything of value to or for the benefit of, any customer of respondent as compensation, or in consideration for, any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of any of respondent's products, unless such payment or consideration is offered or otherwise affirmatively made available on proportionally equal terms to all other customers competing in the resale of such products with the favored customer.

*It is further ordered*, That the allegation of a substantial lessening of competition or tendency toward monopoly in the line of commerce in which the respondent is engaged, be dismissed.

## 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 2nd day of May, 1961, 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.