

with the order to cease and desist.

IN THE MATTER OF
RUSSELL-WARD CO., INC.

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

Docket 8207. Complaint, Dec. 7, 1960—Decision, May 17, 1961

Consent order requiring a Seattle, Wash., distributor of food products to cease violating Sec. 2(c) of the Clayton Act by accepting commissions from suppliers on substantial purchases of food products for its own account for resale, such as a discount usually at the rate of 10 cents per $13\frac{1}{2}$ bushel box

of citrus fruit from Florida sellers, or a lower price which reflected such discount.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party named in the caption hereof, and hereinafter more particularly described, has been and is now violating the provisions of subsection (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:

PARAGRAPH 1. Respondent Russell-Ward Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1528 Occidental Avenue, Seattle 4, Washington.

PAR. 2. Respondent is now, and for the past several years has been, engaged in business primarily as a distributor, buying, selling and distributing, for its own account, citrus fruit, produce and other food products, all of which are hereinafter sometimes referred to as food products. Respondent purchases its food products from a large number of suppliers located in many sections of the United States.

In many transactions respondent also acts in the capacity of a broker, representing packer-principals, located in many sections of the United States, in the sale and distribution of their citrus fruits and produce, and is paid for its services in connection therewith the packers' usual rate of brokerage on the particular type of product sold. For example, some of the packer-principals so represented by respondent are citrus fruit packers located in the State of Florida. When so representing these packer-principals located in Florida, as their broker, respondent is paid for its services in connection with the sale of their citrus fruit, a brokerage or commission usually at the rate of 10 cents per 1 $\frac{3}{4}$ bushel box, or equivalent.

The annual volume of business done by respondent, both as a distributor and as a broker, is substantial.

PAR. 3. In the course and conduct of its business for the past several years, respondent has purchased and distributed, and is now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Washington, in which respondent is located. Respondent transports, or causes such food products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United

States to respondent who is located in the State of Washington, or to respondent's customers located in said State, or elsewhere. In addition, respondent, when representing packer-principals, has, directly or indirectly, caused such food products, when sold or purchased, to be shipped and transported from various packers' packing plants or places of business to respondent or to respondent's customers located in states other than the state of origin of the shipment. Thus, for the past several years, respondent has been, and is now, engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 4. In the course and conduct of its business for the past several years, but more particularly since January 1, 1958, respondent has been and is now making substantial purchases of food products for its own account for resale from some, but not all, of its suppliers, and on a large number of these purchases respondent has received and accepted, and is now receiving and accepting, from said suppliers, a brokerage, commission, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondent has made substantial purchases of citrus fruit for its own account from suppliers or sellers located in the State of Florida and has received from these suppliers or sellers on said purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1% bushel box, or equivalent. In many instances, respondent receives a lower price from the suppliers or sellers which reflects said brokerage or commission.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, on its own purchases, as herein 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, Mr. Ernest G. Barnes, and Mr. George W. Elliott for the Commission.

Mr. K. Dennis Jones, of Seattle, Wash., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on December 7, 1960, issued its complaint herein, charging the respondent, Russell-Ward Co., Inc., a corporation, with having violated the provisions of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13), and respondent was duly served with process.

On March 17, 1961, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval

an "Agreement Containing Consent Order To Cease And Desist", which had been entered into by and between respondent, its attorney, and counsel supporting the complaint, under date of March 15, 1961, subject to the approval of the Bureau of Litigation of the Commission, which had duly approved the same.

After due consideration, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Russell-Ward Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1528 Occidental Avenue, Seattle, Washington.

2. 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.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondent waives:

- (a) Any further procedural steps before the hearing examiner and the Commission;

- (b) The making of findings of fact or conclusions of law; and

- (c) All of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of said complaint and agreement, the hearing examiner approves and accepts the "Agreement Containing

Consent Order To Cease And Desist"; finds that the Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under §2(c) of the Clayton Act, as amended, against the respondent, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; and that the order proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and therefore issues the said order, as follows:

It is ordered, That respondent Russell-Ward Co., Inc., a corporation, and its officers, representatives and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or other food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or other food products for respondent's own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

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 17th day of May 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Russell-Ward Co., 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.

IN THE MATTER OF

JULEE MANUFACTURING CORPORATION ET AL.