

Complaint

58 F.T.C.

IN THE MATTER OF

PATRICK FRUIT CORPORATION

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

Docket 7933. Complaint, June 3, 1960—Decision, May 19, 1961

Consent order requiring a Sanford, Fla., packer of citrus fruit to cease violating Sec. 2(c) of the Clayton Act by paying brokerage, or its equivalent, to customers making purchases for their own accounts for resale.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent 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 Patrick Fruit Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Sanford, Florida, with mailing address as Post Office Box 70, Sanford, Florida.

PAR. 2. Respondent is now and for the past several years has been engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, all of which are hereinafter sometimes referred to as citrus fruit or fruit products. Respondent sells and distributes its citrus fruit through brokers, as well as direct, to customers located in many sections of the United States. When brokers are utilized in making sales for it, respondent pays them for their services a brokerage or commission, usually at the rate of 10 cents per 13½ bushel box. Respondent's annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of its business over the past several years, respondent has sold and distributed and is now selling and distributing its citrus fruit in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located in the several states of the United States other than the State of Florida in which respondent is located. Respondent transports, or causes such citrus fruit, when sold, to be transported from its place of business or packing plant, or other places, within the State of Florida to such buyers, or to the buyers' customers, located in vari-

ous other states of the United States. Thus there has been, at all times mentioned herein, a continuous course of trade in commerce in said citrus fruit across state lines between respondent and the respective buyers of such citrus fruit.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has been and is now making substantial sales of citrus fruit to some, but not all, of its brokers, and other direct buyers purchasing for their own account for resale, and on a large number of these sales respondent paid, granted or allowed, and is now paying, granting or allowing to these brokers and other direct buyers on their purchases, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

PAR. 5. The acts and practices of respondent 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 and *Mr. Ernest G. Barnes* for the Commission.
No appearance for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued June 3, 1960, charges the respondent Patrick Fruit Corporation, a Florida corporation, located at Sanford, Florida, with violation of Section 2(c) of the Clayton Act, as amended, in connection with packing, selling and distributing citrus fruit or fruit products.

After the issuance of the complaint, respondent entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director and Associate Director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

By the terms of said agreement, the respondent admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the respondent expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondent further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and issues the following order:

ORDER

It is ordered, That the respondent Patrick Fruit Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit or fruit 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 of or who is 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 any sale of citrus fruit or fruit 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 19th 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.

IN THE MATTER OF

HOLLY HILL FRUIT PRODUCTS, INCORPORATED

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

Docket 7934. Complaint, June 3, 1960—Decision, May 19, 1961

Consent order requiring a citrus fruit packer in Davenport, Fla., to cease violating Sec. 2(c) of the Clayton Act by paying brokerage, or its equivalent, to customers making purchases for their own accounts for resale.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent 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 Holly Hill Fruit Products, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Davenport, Florida, with mailing address as Post Office Box 5, Davenport, Florida.

PAR. 2. Respondent is now and for the past several years has been engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, all of which are hereinafter referred to as citrus fruit or fruit products. Respondent sells and distributes its citrus fruit through brokers, as well as direct, to customers located in many sections of the United States. When brokers are utilized in making sales for it, respondent pays them for their services a brokerage or commission, usually at the rate of 10 cents per 1 $\frac{3}{5}$ bushel box, or equivalent. Respondent's annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of its business over the past several years, respondent has sold and distributed and is now selling and distributing its citrus fruit in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located in the several states of the United States other than the State of Florida in which respondent is located. Respondent transports, or causes such citrus fruit, when sold, to be transported from its place of business or packing plant in the State of Florida, or from other places