

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 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

NEVINS FRUIT COMPANY, INC., ET AL.

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

Docket 8019. Complaint, June 27, 1960—Decision, May 19, 1961

Consent order requiring citrus fruit packers in Titusville, 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 parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are 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 Nevins Fruit Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Titusville, Florida, with mailing address as Post Office Box "L", Titusville, Florida. Respondent Nevins Fruit Company, Inc. owns fifty percent of the stock of respondent Nevins-Ideal, Inc., and directs and supervises its operations, and handles the sales of fresh citrus fruit of both corporations.

Respondent Nevins-Ideal, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business

Complaint

58 F.T.C.

located in Titusville, Florida, with mailing address as Post Office Box "L", Titusville, Florida.

Both corporations are hereinafter referred to jointly as respondents.

PAR. 2. Respondents are now, and for the past several years have 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. Respondents sell and distribute their 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 them, respondents pay them for their services a brokerage or commission, usually at the rate of 10 cents per 1 $\frac{3}{8}$ bushel box, or equivalent. Respondents' annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of their business over the past several years, respondents have sold and distributed, and are now selling and distributing, their 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 respondents are located. Respondents transport or cause such citrus fruit, when sold, to be transported from their place of business or packing plant in the State of Florida, or from other places within the state, to such buyers or the buyers' customers located in various 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 said respondents and the respective buyers of such fruit.

PAR. 4. In the course and conduct of their business, as aforesaid, for the past several years, but more particularly since January 1, 1959, respondents have been and are now making numerous and substantial sales of citrus fruit to some, but not all, of their brokers and direct buyers purchasing for their own account for resale, and on a large number of these sales respondents paid, granted or allowed, and are now paying, granting or allowing, to these brokers and direct buyers on their own 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 respondents in paying, granting or allowing a brokerage or commission, or a discount or an allow-

ance in lieu thereof, to buyers on purchases for their own account, as hereinabove 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.
Johnson & Johnson, by *Mr. Counts Johnson*, of Tampa, Fla., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of Section 2(c) of the Clayton Act, as amended. An agreement for disposition of the proceeding by means of a consent order has now been executed by respondents and their counsel and counsel supporting the complaint and submitted to the hearing examiner for his consideration. Attached to and made a part of the agreement is a stipulation entered into by the same parties for the purpose of making clear the intent of the complaint and of the proposed order to cease and desist. The word "agreement" as used hereinafter will include the stipulation.

The agreement provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and the proposed order, and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the

Order

58 F.T.C.

agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Nevins Fruit Company, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in the City of Titusville, State of Florida, with mailing address as Post Office Box "L", Titusville, Florida.

Respondent Nevins-Ideal, Inc. is a corporation 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 in the City of Titusville, State of Florida, with mailing address as Post Office Box "L", Titusville, Florida.

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

ORDER

It is ordered, That the respondents Nevins Fruit Company, Inc., a corporation, and Nevins-Ideal, Inc., a corporation, and respondents' 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

The Commission having now determined that the hearing examiner's initial decision, filed January 18, 1961, is adequate and appropriate to dispose of this proceeding:

It is ordered, That said decision be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents 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 contained in the aforesaid initial decision.

IN THE MATTER OF

LAKE ALFRED PACKING COMPANY

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

Docket 8020. Complaint, June 27, 1960—Decision, May 19, 1961

Consent order requiring a Lake Alfred, Fla., citrus fruit packer 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 Lake Alfred Packing Company 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 Lake Alfred, Florida, with mailing address as Post Office Box 968, Lake Alfred, 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 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 within the State, to such buyers or to the buyers' customers located in various 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 said respondent and the respective buyers of such fruit.

PAR. 4. In the course and conduct of its business as aforesaid for the past several years, but more particularly since January 1, 1959, respondent has been and is now making numerous and substantial sales of citrus fruit to some, but not all, of its brokers and 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 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 in paying, granting or allowing a brokerage or commission, or a discount or an allowance in lieu thereof, to buyers on purchases for their own account, as hereinabove 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.
Mr. J. Hardin Peterson, of Lakeland, Fla., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of Section 2(c) of the Clayton Act, as amended. An agreement for disposition of the proceeding by means of a consent order has now been executed by respondent and its counsel and counsel supporting the complaint and submitted to the hearing examiner for his consideration. Attached to and made a part of the agreement is a stipulation entered into by the same parties for the purpose of making clear the intent of the complaint and of the proposed order to cease and desist. The word "agreement" as used hereinafter will include the stipulation.

The agreement provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the

Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the 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.

The hearing examiner having considered the agreement and the proposed order, and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Lake Alfred Packing Company is a corporation 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 in the City of Lake Alfred, State of Florida, with mailing address as Post Office Box 968, Lake Alfred, Florida.

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

ORDER

It is ordered, That the respondent Lake Alfred Packing Company, 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

The Commission having now determined that the hearing examiner's initial decision, filed January 18, 1961, is adequate and appropriate to dispose of this proceeding:

It is ordered, That said decision be, and it hereby is, adopted as the decision of the Commission.

956

FEDERAL TRADE COMMISSION DECISIONS

Complaint

58 F.T.C.