

ner'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 respondent 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 contained in the aforesaid initial decision.

IN THE MATTER OF
DI GIORGIO FRUIT CORPORATION

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

Docket 8147. Complaint, Oct. 17, 1960—Decision, May 19, 1961

Consent order requiring a San Francisco, Calif., packer of fruits, vegetables, and citrus juices, also producing wine products, and operating a Florida Division at Fort Pierce, Fla., to cease violating Sec. 2(c) of the Clayton Act by paying brokerage, or its equivalent, to customers making purchases of citrus fruit 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 Di Giorgio Fruit Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business, located at 350 Sansome Street, San Francisco 4, California.

Respondent Di Giorgio Fruit Corporation owns and operates a Florida Division located at Fort Pierce, Florida, with mailing address as Post Office Box 1352, Fort Pierce, Florida.

PAR. 2. Respondent Di Giorgio Fruit Corporation for many years has been, and is now, engaged in business as a grower, packer and

shipper of fruits and vegetables, and as a canner and processor of citrus juices. Respondent is also engaged in business as a producer and distributor of wine products.

Respondent's sales of all products are substantial, and its sales of fresh fruit approximated \$1,000,000 in 1959.

PAR. 3. Respondent, through its Florida Division as above described, 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. 4. 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. 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 said 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 respondent and the respective buyers of such citrus fruit.

PAR. 5. 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 own purchases, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

PAR. 6. The acts and practices of respondent in paying, granting, or allowing a brokerage or commission, or an allowance or discount 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* supporting the complaint.

Mr. Edward I. Kaplan, of New York, N. Y., for respondent.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on October 17, 1960, charging it with having violated Section 2(c) of the Clayton Act, as amended. After being served with said complaint, respondent entered into an agreement, dated December 20, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties, together with a stipulation making more specific the acts and practices complained of and the intent of the order. Said agreement, which has been signed by respondent, by counsel for said respondent and by counsel supporting the complaint, and approved by the Director and Associate Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, together with the stipulation which has been made a part of

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said agreement, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Di Giorgio Fruit Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 350 Sansome Street, San Francisco 4, California.

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 the provisions of the Clayton Act.

ORDER

It is ordered, That the respondent Di Giorgio 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

The Commission having now determined that the hearing examiner's initial decision, filed January 31, 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 respondent 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 contained in the aforesaid initial decision.

Complaint

IN THE MATTER OF

PEOPLES PACKING COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(c) OF THE CLAYTON ACT*Docket 8148. Complaint, Oct. 17, 1960—Decision, May 19, 1961*

Consent order requiring a Lakeland, 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 Peoples Packing Company, Inc. 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 Lakeland, Florida, with mailing address as Post Office Box 1658, Lakeland, 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, the respondent pays them for their services a brokerage or commission, usually at the rate of 10 cents per 1 $\frac{3}{5}$ 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 in the State of Florida, or