

any manner in which it is required to
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
PIPPING PACKING COMPANY, INC.

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

Docket 8210. Complaint, Dec. 7, 1960—Decision, May 19, 1961

Consent order requiring a Winter Haven, 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

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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 Pipping 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 offices and principal place of business located at Winter Haven, Florida, with mailing address as Post Office Box 1446, Winter Haven, 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 company salesmen, brokers and wholesalers, 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 $\frac{3}{4}$ 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 such 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, respondent has been and is now making 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 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 in paying, granting or allowing to brokers and direct buyers a commission, brokerage or other compensation, or an allowance or discount in lieu thereof, on their own purchases, 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. Bryant, Martin & Kibler, by Mr. D. B. Kibler, III, of Lakeland, Fla., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on December 7, 1960, charging Respondent with violation of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13), by paying, granting, or allowing a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, to some of its brokers and direct buyers, on their purchases of citrus fruit for their own account for resale.

Thereafter, on March 27, 1961, Respondent, its counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director of the Commission's Bureau of Litigation, and thereafter, on April 5, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Pipping Packing Company, Inc. as a Florida corporation, with its office and principal place of business located in Winter Haven, Florida.

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.

Respondent waives any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and 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 the agreement. All parties agree that the record on which the initial decision and the decision of the Commission

Decision

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shall be based shall consist solely of the complaint, the agreement, and the stipulation attached thereto, which is made a part of the agreement by reference, the same as if quoted therein verbatim; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said 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.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease and Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That the Respondent Pipping Packing Company, Inc., 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, Pipping Packing Company, 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

FERTIG'S FIFTH AVENUE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8186. Complaint, Nov. 28, 1960—Decision, May 26, 1961*

Consent order requiring a New York City retailer to cease making such deceptive pricing and savings claims in newspapers and otherwise as that "Reg." \$30, \$33, \$55, and \$60 bedspreads were "Now" \$19.95, \$22.95, \$37.50, and \$39.95, respectively, when the higher prices were fictitious; and that many items available at the advertised prices for several periods during the year were offered at "EXTRAORDINARY ONCE-A-YEAR SAVINGS!"

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Fertig's Fifth Avenue, Inc., a corporation, and Saul B. Fertig, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Fertig's Fifth Avenue, Inc., is a corporation organized, 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 at 417 Fifth Avenue, New York, New York.

Respondent Saul B. Fertig is an officer of the corporate respondent. He formulates, directs and controls the policies, practices and acts of said corporate respondent, including the practices and acts hereinafter referred to. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of various household items, including linens, sheets, towels, pillows, comforts and bedspreads.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their products when sold to be shipped from their place of business in the State of New York to purchasers thereof located in various other states, and maintain, and at all times relevant herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.