

the initial decision of the hearing examiner shall, on the 14th day of June, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents herein 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.

IN THE MATTER OF

JACK M. RAWLINGS, JR., TRADING AS
MEREDITH MILLING COMPANY, ETC.

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

Docket 8142. Complaint, Oct. 13, 1960—Decision, June 15, 1961

Consent order requiring an individual proprietor of a feed mill at McComb, Miss., a substantial factor in the animal feed business in Mississippi and Louisiana, and also engaged as a broker in the sale of cottonseed meal and hulls, soybean meal, and related products, to cease receiving illegal brokerage fees in violation of Sec. 2(c) of the Clayton Act by making, in his milling capacity, substantial purchases of said products on which he received, as broker, a percentage of the net sales price as commission.

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 designated and described, has violated 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 Jack M. Rawlings, Jr., is an individual, trading as Meredith Milling Company and as J. M. Rawlings, Jr., Broker, with principal office and place of business located at McComb, Mississippi. For some years past respondent has been sole proprietor of Meredith Milling Company, a feed mill engaged in the sale of animal feed to customers in Mississippi and Louisiana. Meredith Milling Company is a substantial factor in the animal feed business, with a sales volume of approximately \$280,000 annually. Since 1959 respondent has also been trading as J. M. Rawlings, Jr., Broker, in which capacity respondent negotiates the sale of cottonseed meal, cottonseed hulls, soybean meal and related products for and on behalf of various seller-principals and in connection therewith receives a commission or brokerage fee paid by said seller-principals.

PAR. 2. In the course and conduct of his business for several years past, respondent has purchased and is now purchasing cottonseed meal, cottonseed hulls, soybean meal and related products in commerce, as "commerce" is defined in the aforesaid Clayton Act, from sellers located in states of the United States other than the state in which respondent is located and has resold substantial quantities of such products to customers likewise located in states other than the state in which respondent is located. Said respondent transports or causes such products, when purchased or resold, to be transported from the places of business of his respective suppliers to his own place of business, or from his own place of business to the places of business of his 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 products, across state lines between respondent and his suppliers, and between respondent and his customers.

PAR. 3. In the course and conduct of his business in commerce, as aforesaid, respondent, trading as Meredith Milling Company, has made and is now making substantial purchases of cottonseed meal, cottonseed hulls, soybean meal and related products from various suppliers and sellers, on which purchases respondent, trading as

J. M. Rawlings, Jr., Broker, has received and accepted, and is now receiving and accepting, directly or indirectly, something of value as a commission, or an allowance or discount in lieu thereof, from said suppliers and sellers. These rates of commission, brokerage fees, or allowances or discounts in lieu thereof are a certain percentage of the net sales price of said products, as agreed upon between respondent and the sellers and suppliers of said products.

PAR. 4. The acts and practices of respondent in making substantial purchases for his own account and receiving and accepting in connection therewith commissions, brokerage fees, or allowances or discounts in lieu thereof, as alleged herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. John Perry supporting the complaint.

Mr. Jack M. Rawlings, Jr., Pro Se.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on October 13, 1960 charging him with violation of subsection (c) of Section 2 of the Clayton Act in accepting commissions or allowances in lieu thereof on purchases in commerce of cottonseed meal, cottonseed hulls, soybean meal and related products.

On March 27, 1961 counsel submitted to the undersigned hearing examiner an agreement dated March 18, 1961, between respondent and counsel supporting the complaint, providing for the entry without further notice of a consent order. The agreement was duly approved by the Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by respondent of all jurisdictional facts alleged in the complaint.

B. Provisions that:

1) The complaint may be used in construing the terms of the order;

2) The order shall have the same force and effect as if entered after a full hearing;

3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

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- 4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;
- 5) The order may be altered, modified, or set aside in the manner provided by statute for other orders.

C. Waivers of:

- 1) The requirement that the decision must contain a statement of findings of fact and conclusion of law;
- 2) Further procedural steps before the hearing examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondent of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

Having considered said agreement including the proposed order and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding, the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Jack M. Rawlings, Jr., is an individual, trading as Meredith Milling Company and as J. M. Rawlings, Jr., Broker, with principal office and place of business located at McComb, Mississippi.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Jack M. Rawlings, Jr., an individual trading as Meredith Milling Company and as J. M. Rawlings, Jr., Broker, or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of cottonseed meal, cottonseed hulls, soybean meal, or any other products, in commerce, as "commerce" is defined in the Clayton Act, as amended, 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

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with any purchase or such 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

The Commission having considered the initial decision of the hearing examiner filed April 7, 1961, wherein he accepted an agreement containing a consent order to cease and desist theretofore executed by respondent and counsel in support of the complaint; and

It appearing that the initial decision erroneously characterizes one of the provisions of the consent agreement which is made mandatory by §3.25 of the Commission's Rules of Practice as "permissive"; and the Commission being of the opinion that the error should be corrected:

It is ordered, That the initial decision be, and it hereby is, modified by striking therefrom the word "permissive" as it appears in the first line of the last paragraph on page 2.

It is further ordered, That the initial decision, as so modified, shall, on the 15th day of June, 1961, become the decision of the Commission.

It is further ordered, That the respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.