

Complaint

IN THE MATTER OF
MICHIGAN FRUIT CANNERS, INC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d) OF THE
CLAYTON ACT*Docket 8095. Complaint, Aug. 25, 1960—Decision, Sept. 20, 1961*

Order dismissing without prejudice, for lack of evidence of competition, complaint charging canners of fruits and vegetables in Benton Harbor, Mich., with unlawfully discriminating among competing customers in paying promotional allowances.

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 (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Michigan Fruit Canners, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 9th & Oak Streets, Benton Harbor, Michigan.

PAR. 2. Respondent is now and has been engaged in the business of selling and distributing canned fruits and vegetables of many varieties, which it processes and cans at its plant in Benton Harbor, Michigan. Respondent sells and distributes its products to wholesalers and retailers, including voluntary groups and retail chain store organizations. Respondent's sales of its products are substantial, exceeding \$15,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Michigan to customers located in other States of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, and particularly since 1958, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were

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not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, in the year 1959, respondent contracted to pay and did pay to Benner Tea Company, a retail grocery chain with headquarters in Burlington, Iowa, the amount of \$150.00 as compensation or as an allowance for advertising or other services or facilities furnished by or through Benner Tea Company in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not made available on proportionally equal terms to all other customers competing with Benner Tea Company in the sale and distribution of products of like grade and quality purchased from respondent.

PAR. 6. The acts and practices of respondent, as alleged, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John Perry for the Commission.

Bell, Boyd, Marshall & Lloyd by *Mr. John T. Loughlin*, Chicago, Ill., for respondent.

INITIAL DECISION BY MAURICE S. BUSH, HEARING EXAMINER

This proceeding is before the hearing examiner upon motion of counsel supporting the complaint to dismiss the complaint in this proceeding for the reason that after investigation, he has been unable to develop evidence of competition among the customers of the respondent sufficient to support the charges of the complaint and the hearing examiner having considered said motion and the record herein,

ORDER

It is ordered, That the complaint in this proceeding be and the same is hereby dismissed, without prejudice to the right of the Commission to take any further action in the matter in the future which may be warranted by the then existing circumstances.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 20th day of September 1961, become the decision of the Commission.

Complaint

IN THE MATTER OF

ALBIN P. CRUTCHFIELD DOING BUSINESS AS ALBIN
CRUTCHFIELDCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(c)
OF THE CLAYTON ACT*Docket 8129. Complaint, Sept. 27, 1960—Decision, Sept. 20, 1961*

Consent order requiring a Titusville, Fla., broker of citrus fruit and produce to cease violating Sec. 2(c) of the Clayton Act by accepting from Florida suppliers unlawful brokerage on his own purchases for resale, such as a discount at the rate of 10 cents per 1 $\frac{3}{4}$ bushel box, or a lower price reflecting such commission.

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 Albin P. Crutchfield is an individual doing business as Albin Crutchfield under and by virtue of the laws of the State of Florida, with his office and principal place of business located in Titusville, Florida, with mailing address as Post Office Box 1988, Titusville, Florida.

PAR. 2. Respondent is now, and for the past several years has been, engaged primarily in the brokerage business, representing a number of packer-principals located in various sections of the United States, in connection with the sale and distribution of citrus fruit and produce, as well as other food products, all of which are hereinafter sometimes referred to as food products. In particular, respondent represents a number of citrus fruit packers located in the State of Florida in the sale and distribution of citrus fruit, for which respondent was and is paid for his services in connection therewith a brokerage or commission, usually at the rate of 10 cents per 1 $\frac{3}{4}$ bushel box, or equivalent. A substantial part of respondent's business is acting in the capacity of a buying broker, purchasing citrus fruit and produce for his own account for resale.

PAR. 3. In the course and conduct of his business for the past several years, in representing packer-principals, as well as when purchasing for his own account, respondent has, directly or indirectly, caused such citrus fruit or food products, when sold or purchased, to

be shipped and transported from various packers' packing plants or places of business located in the State of Florida to respondent's customers located in many states other than the State of Florida. Thus, for the past several years, respondent has been, and is now, engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 4. In the course and conduct of his business in commerce, as aforesaid, during the past several years, but more particularly since January 1, 1959, to the present time, respondent has made, and is now making, numerous and substantial purchases of food products for his own account for resale from various packers or sellers on which purchases he has received and accepted, and is now receiving and accepting, directly or indirectly, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith. For example, respondent has made, and is now making, substantial purchases of citrus fruit for his own account from a number of packers located in the State of Florida, which fruit is shipped and transported to customers located outside the State of Florida, and on said purchases respondent receives from the packer a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per $1\frac{3}{5}$ bushel box, or equivalent. In many instances respondent receives a lower price from the packer, which reflects said brokerage or commission.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, on his own purchases, as herein 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).

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, 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, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides

an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Albin P. Crutchfield is an individual doing business as Albin Crutchfield under and by virtue of the laws of the State of Florida, with his office and principal place of business located in the City of Titusville, State of Florida, with mailing address as Post Office Box 1988, Titusville, Florida.

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

ORDER

It is ordered, That respondent Albin P. Crutchfield, individually and doing business as Albin Crutchfield, and respondent's agents, representatives, and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of citrus fruit or produce 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 with any purchase of citrus fruit or produce 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.

It is further ordered, That the respondent herein 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 this order.