

By the Commission, Commissioners Elman and MacIntyre not participating.

IN THE MATTER OF
HAFFIELD FRUIT COMPANY, INC.

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

Docket 8357. Complaint, Apr. 14, 1961—Decision, Sept. 26, 1961

Consent order requiring a citrus fruit packer doing a substantial business in Vero Beach, Fla., to cease making unlawful brokerage payments to customers purchasing for their own accounts for resale, in violation of Sec. 2(c) of the Clayton Act.

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.

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Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Haffield Fruit Co., 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 Vero Beach, Florida, with mailing address as Post Office Box 1088, Vero Beach, 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 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 $1\frac{3}{5}$ bushel box or equivalent, or 5 cents per carton. In some instances, however, respondent pays brokerage at the rate of 6 cents per carton. 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).

Messrs. Cecil G. Miles and Basil J. Mezines for the Commission.
Mr. Jerre J. Haffield, president, for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued April 14, 1961, the Federal Trade Commission charged respondent, Haffield Fruit Company, Inc. (a corporation organized and existing under the laws of the State of Florida and engaged in business at Vero Beach, Florida), with having violated Section 2(c) of the Clayton Act, as amended, by paying, granting or allowing to brokers and direct buyers a commission, brokerage or other compensation, or an allowance or discount in lieu thereof, in the course of its sales and distribution of citrus fruits in commerce.

After the issuance of the complaint, respondent, by its president, and counsel supporting the complaint entered into an agreement and stipulation providing for the issuance of a consent order to cease and desist, thus disposing of all the issues in this proceeding. The agreement provides that the stipulation which clarifies and limits the order be incorporated into and made a part thereof.

In the agreement it is expressly provided that the signing thereof is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as in the complaint alleged.

By the terms of the agreement, the respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By the agreement, the respondent expressly waives any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all rights it may have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

Respondent further agrees that the order to cease and desist, to be issued in accordance with the agreement, shall have the same force and effect as if made after a full hearing.

It is further provided in said agreement that the same, together with the complaint, shall constitute the entire record herein and that the complaint herein may be used in construing the terms of the order to be issued pursuant to said agreement and that such order may be

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altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The Hearing Examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Now, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That the respondent Haffield Fruit 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, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 26th day of September 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the 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.

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IN THE MATTER OF

YAKIMA FRUIT & COLD STORAGE COMPANY

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

Docket 7718. Complaint, Jan. 5, 1960—Decision, Sept. 28, 1961

Order requiring a Yakima, Wash., packer-distributor of apples and other fresh fruit with annual sales approximating \$3,000,000, to cease violating Sec. 2(d) of the Clayton Act, by such acts as paying the Houston, Tex., operator of a large chain of retail stores in Texas, Louisiana, and Tennessee, sums of \$192.50 and \$100 in connection with periodic sales promotion campaigns, while making no comparable payments available to its customers competing with said chain.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly 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, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Yakima Fruit & Cold Storage Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at First North and West B Streets, Yakima, Washington.

PAR. 2. Respondent is now and has been engaged in the business of packing, selling and distributing apples and other fresh fruits to retail chain store organizations and through brokers to other independent retail grocery stores and produce wholesalers throughout the United States. Sales made by respondent are substantial and amount to approximately \$3,000,000 per annum.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from the respondent's principal place of business, located in Washington, to customers located in other states of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, 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