

Complaint

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IN THE MATTER OF

HARRY J. ASLAN DOING BUSINESS AS HARRY ASLAN
CO. ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-124. Complaint, Apr. 25, 1962—Decision, Apr. 25, 1962*

Consent order requiring 13 California shippers of white muscat juice grapes, used primarily for wine-making, in the Fresno area—their shipments and sales of which during the 1961 season represented more than half of all interstate carlot shipments made from California—to cease conspiring to fix and adhere to minimum prices for juice grapes, as they did at a series of meetings held beginning about mid-September of 1961, slightly prior to the shipping season, and continuing to early October.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in respect thereto as follows:

PARAGRAPH 1. Harry J. Aslan, individually and doing business as Harry Aslan Co., has places of business at Kingsbury and Del Rey, Calif., with his principal place of business at 1060 Simpson Street, Kingsburg, Calif.

L. W. Crosby, individually and doing business as Del Rey Fruit Distributors, has his office and principal place of business at 12480 E. American Avenue, Del Rey, Calif.

Giannini Fruit Sales, Inc. is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at 496 South N. Street (P.O. Box 155), Dinuba, Calif. In 1961 its officers, who were also its directors, were Leroy G. Giannini, president; Wayne H. Towne, vice president; and Ruth E. Giannini, secretary-treasurer.

Chris Sorensen Packing Co. is a corporation organized and existing under and by virtue of the laws of the State of California with its

office and principal place of business at Newmark Avenue (Box 338), Parlier, Calif. In 1961 its officers were Chris Sorensen, president; George Domoto, vice president; James Ruby, treasurer; and Chris Sorensen, Jr., secretary. The directors were Mr. and Mrs. Chris Sorensen and James Ruby.

Edwin L. Barr, Sr., Edwin L. Barr, Jr., Merle Barr and Caroline Barr, individually and as co-partners doing business as Barr Packing Company, a partnership, have their office and principal place of business at Seventh and L Streets (P.O. Box 207), Sanger, Calif.

Tennis H. Erickson, individually and doing business as Erickson Packing Company, has his office and principal place of business at American and Portola Streets, Del Rey, Calif.

William P. Condry, H. Y. Hamilton and Samuel B. Randall, individually and as co-partners doing business as Hall Packing Company, a partnership, have their office and principal place of business at Sanger, Calif.

John B. Jorgensen, Sr., individually and doing business as Jorgensen Farms, has his office and principal place of business at First and East Grant Streets, Selma, Calif.

Jack Young, individually and doing business as Youngstown Grape Distributors, has his office and principal place of business at 16th Street (Box 271), Reedley, Calif.

Ballantine Produce Co., Inc. is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at (Box 185) Sanger, Calif. In 1961 its officers, who were also its directors, were Herman A. Albertson, president; Virgil E. Rasmussen, vice president; and Ed Schoenburg, secretary-treasurer.

Bianco Packing Co., Inc. is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at 930 M Street (Box 274), Sanger, Calif. In 1961 its officers, who were also its directors, were Alphonse Bianco, president, Dominic Bianco, vice president, and Anthony Bianco, Jr., secretary-treasurer.

Mike Fierro and Vaughn Girazian, individually and as co-partners trading as G & F Fruit Distributors, a partnership, have their office and principal place of business at 39400 14th Avenue, West, Kingsburg, Calif.

Floyd J. Harkness, Inc. is a corporation organized and existing under and by virtue of the laws of the State of California, doing business as United Packing Co., with its office and principal place of business at 216 Rowell Building, Fresno, Calif. In 1961 the officers

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of the corporation were Floyd J. Harkness, Sr., president; W. Hoyt Colgate, vice president, and Floyd J. Harkness, Jr., secretary-treasurer. The directors of the corporation were its officers and Molly Harkness and Harriette Colgate.

PAR. 2. All of the respondents herein are and for the several years last past have been engaged in the business, among others, of selling and shipping juice grapes to various purchasers thereof. Juice grapes, as distinguished from table stock grapes, are raised and sold primarily for the purpose of winemaking. Respondents in the course and conduct of their business of selling and shipping juice grapes during the 1961 season and in previous years have all sold such grapes to purchasers located in Canada and in States other than the State of California and the District of Columbia. Respondents have caused such grapes so sold to be transported and shipped to the places where such purchasers were located. All of the respondents herein during the 1961 season were engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act in connection with the sale and shipment of juice grapes.

PAR. 3. The great bulk of all grapes produced in the United States, whether for juice or table purposes comes from the State of California. During the seasons for each year from 1950 through 1960 California carlot rail shipments of grapes have exceeded 98% of the total of such shipments in the United States. And of the total California carlot rail shipments of grapes in each of these years, more than 95% represented interstate carlot rail passings. Few, if any, juice grapes are shipped throughout the United States from any State other than California.

Juice grapes may be separated into two classes, namely, black juice grapes and white juice grapes. There are a number of different kinds of varieties of grapes within each classification. In the black juice class the great bulk of interstate carlot rail passings from California during each of the years since 1950 has been composed of Alicante and Zinfandel grapes. In the white juice category such shipments during each of the same years, except for 1950, were composed of more than 95% of Muscat grapes.

The shipping season for juice grapes in California generally commences about the first of September for black juice and about mid-September for white juice grapes, and extends to the end of October or the first few days of November for both classifications. The great bulk of these grapes, however, is shipped in a much more concentrated period. To illustrate, during the 1960 season more than 95% of California carlot rail shipments of white juice grapes occurred

during the period between the weeks ending September 17 and October 22. A comparable illustration for black juice grapes during the same season reflects more than 95% of shipments occurring during the period between the weeks ending September 17 and October 29.

The production and shipping areas for black juice grapes in the State of California are substantially larger than for those in the white juice classification. By way of illustration, in the 1960 season interstate carlot rail passings of California grapes for the black juice class emanated from loading stations within 11 counties while the corresponding figure for white juice grapes embraced only five counties. Production and shipment of white juice grapes is largely concentrated in an area within a 20 to 30 mile radius of Fresno. Of all interstate carlot rail passings of white juice grapes in California during 1960, more than 99% were Muscat grapes and more than 60% of this total emanated from loading stations within Fresno County. All respondents herein, with the exception of Giannini Fruit Sales, Inc., have their offices and places of business in communities included among such loading stations.

PAR. 4. Respondent grape shippers as a group do now and for several years last past have occupied a strong and dominant position in the business of shipping and selling juice grapes, particularly white juice Muscat grapes. For example, their combined shipments of such grapes during the 1961 season approached or exceeded 1,000 carlots or the equivalent thereof. From the time in September when they, or some of them, commenced shipments of Muscat grapes through October 7, 1961, such shipments in the aggregate represented more than 50% of total carlot equivalents of all interstate passings of such grapes from California.

PAR. 5. Each of the respondents herein is and has been in competition with one or more of the other respondents and with other shippers and vendors of juice grapes not parties hereto, in the sale and distribution of juice grapes in commerce, as "commerce" is defined in the Federal Trade Commission Act, except to the extent that actual and potential competition has been hindered, lessened, restricted, restrained and eliminated by the acts and practices hereinafter alleged.

PAR. 6. Respondent shippers herein have agreed, combined, conspired or otherwise engaged in a course of dealing or reached a common understanding to fix and establish minimum prices for juice grapes during the shipping season for 1961 to which they would and did adhere and below which they did not and would not sell. The result of this combination, conspiracy, course of dealing or common under-

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standing as heretofore alleged, and acts and practices engaged in by respondents pursuant thereto, has been or may be to unlawfully hinder, restrain and destroy competition between and among respondents herein and others not parties hereto who are engaged in the sale and distribution of juice grapes in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. The agreement, combination, conspiracy, course of dealing or common understanding among respondents to fix and adhere to minimum prices for juice grapes was reached at a series of meetings among which were those held in Sanger, California. These meetings were held at intervals of a few days or a week beginning about mid-September of 1961 at or slightly prior to the commencement of the shipping season for juice grapes and continuing thereafter to a date within the first few days of October. Each of the respondents herein or a representative or representatives thereof attended one or more of these meetings. Among the matters discussed, and agreed upon, at such meetings were minimum prices to be charged and adhered to in the sale of Muscat grapes.

PAR. 8. Respondents' shipments and sales of juice grapes, particularly white Muscat, during the 1961 season through October 7, 1961, represented more than half of all interstate carlot shipments or the equivalent, of such grapes made from California and the greatest percentage of such sales were made pursuant to the agreement, combination, course of dealing, or common understanding reached by and among the respondents as heretofore alleged.

PAR. 9. The capacity, tendency and effect of said agreement, understanding, conspiracy, combination or course of dealing, and the acts and practices of the respondents and each of them done and performed pursuant thereto and in furtherance thereof are now and have been or may be to substantially lessen, restrain, restrict and prevent price competition between and among said respondents in the sale of juice grapes and, because of respondents' dominant position as a group in this business, have had and now have or may have the effect of creating high and artificial prices to purchasers thereof in interstate commerce.

PAR. 10. The concerted acts and practices of the respondents, all and singularly, as hereinbefore set forth, are to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Harry J. Aslan, individually and doing business as Harry Aslan Co., has places of business at Kingsburg and Del Rey, Calif., with his principal place of business at 1060 Simpson Street, Kingsburg, Calif.

Respondent L. W. Crosby, individually and doing business as Del Rey Fruit Distributors, has his office and principal place of business at 12480 E. American Avenue, Del Rey, Calif.

Respondent Giannini Fruit Sales, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at 496 South N Street (P.O. Box 155), Dinuba, Calif.

Respondent Chris Sorensen Packing Co. is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at Newmark Avenue (Box 338), Parlier, Calif.

Respondents Edwin L. Barr, Sr., Edwin L. Barr, Jr., Merle Barr and Caroline Barr, individually and as co-partners doing business as Barr Packing Company, a partnership, have their office and principal place of business at Seventh and L Streets (P.O. Box 307), Sanger, Calif.

Respondent Tennis H. Erickson, individually and doing business as Erickson Packing Company, has his office and principal place of business at American and Portola Streets, Del Rey, Calif.

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Respondents William P. Condry, H. Y. Hamilton and Samuel B. Randall, individually and as co-partners doing business as Hall Packing Company, a partnership, have their office and principal place of business at Sanger, Calif.

Respondent John B. Jorgensen, Sr., individually and doing business as Jorgensen Farms, has his office and principal place of business at First and East Grant Streets, Selma, Calif.

Respondent Jack Young, individually and doing business as Youngstown Grape Distributors, has his office and principal place of business at 16th Street (Box 271), Reedley, Calif.

Respondent Ballantine Produce Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at (Box 185) Sanger, Calif.

Respondent Bianco Packing Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at 930 M Street (Box 274), Sanger, Calif.

Respondents Mike Fierro and Vaughn Girazian, individually and as co-partners trading as G & F Fruit Distributors, a partnership, have their office and principal place of business at 39400 14th Avenue, West, Kingsburg, Calif.

Respondent Floyd J. Harkness, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, doing business as United Packing Co., with its office and principal place of business at 216 Rowell Building, Fresno, Calif.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Harry J. Aslan, individually and doing business as Harry Aslan Co., L. W. Crosby, individually and doing business as Del Rey Fruit Distributors, Giannini Fruit Sales, Inc., its officers and directors, Chris Sorensen Packing Co., its officers and directors, Edwin L. Barr, Sr., Edwin L. Barr, Jr., Merle Barr and Caroline Barr, individually and as co-partners doing business as Barr Packing Company, Tennis H. Erickson, individually and doing business as Erickson Packing Company, William P. Condry, H. Y. Hamilton and Samuel B. Randall, individually and as co-partners doing business as Hall Packing Company, John B. Jorgensen, Sr., individually and doing business as Jorgensen Farms, Jack Young, individ-

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ually and doing business as Youngstown Grape Distributors, Ballantine Produce Co., Inc., its officers and directors, Bianco Packing Co., Inc., its officers and directors, Mike Fierro and Vaughn Girazian, individually and as co-partners doing business as G & F Fruit Distributors, and Floyd J. Harkness, Inc., doing business as United Packing Co., its officers and directors, their respective successors and assigns, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of juice grapes, do forthwith cease and desist from entering into or continuing, cooperating in or carrying out any planned and concerted course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

To establish, fix, or maintain the prices or level of prices, or the terms or conditions of shipment, sale or distribution of juice grapes.

It is further ordered, That the 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 this order.