
IN THE MATTER OF
PURE GOLD, INC.

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

Docket 8209. Complaint, Dec. 7, 1960—Decision, Oct. 16, 1962

Consent order requiring packers of citrus fruit in Redlands, Calif., to cease paying unlawful commissions or discounts in lieu thereof to brokers and direct buyers on purchases for their own accounts for resale.

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, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Pure Gold, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 307 Brookside Avenue, Redlands, Calif.

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 brokers, wholesalers and jobbers, 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 California 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 California, 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 citrus 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 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, Sec. 13).

*Mr. Cecil G. Miles and Mr. Ernest G. Barnes for the Commission.
Surr & Hellyer, by Mr. James R. Edwards, of San Bernardino, Calif., and Tilden and Leventritt, by Mr. Richard A. Tilden, of New York, N.Y., for respondent.*

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on December 7, 1960, issued its complaint herein, charging the above-named respondent with having violated the provisions of § 2(c) of the Clayton Act, as amended (U.S.C. Title 15, § 13) in certain particulars, and respondent was duly served with process.

On August 9, 1961, there was submitted to the undersigned hearing examiner of the Commission, for his consideration and approval, an "Agreement Containing Consent Order To Cease And Desist", which had been entered into by and between respondent and counsel for both parties, under date of April 10, 1961, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Pure Gold, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 307 Brookside Avenue, Redlands, California.

2. 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.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondent waives:

- (a) Any further procedural steps before the hearing examiner and the Commission;

- (b) The making of findings of fact or conclusions of law; and

- (c) All of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement, and the initial decision based thereon, shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. This agreement is entered into subject to the condition that the initial decision based thereon shall

be stayed by the Commission unless and until the Commission disposes of Docket No. 8194, *In the Matter of Western Fruit Growers Sales Co.* [p. 586 herein], by an order to cease and desist in substantially the same form as set forth hereinafter in this agreement, or by other appropriate order to cease and desist, or by dismissal.

7. This 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease and Desist", the hearing examiner approves and accepts this agreement; finds that the Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under § 2(c) of the Clayton Act, as amended (U.S.C. Title 15, § 13) against the respondent, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the order proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That the respondent, Pure Gold, 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.

FINAL ORDER

By its order of September 18, 1961, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

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It appearing that said initial decision is based on an agreement containing a consent order, which agreement provides that said initial decision will be stayed pending Commission disposition of the proceeding in Docket No. 8194, *Western Fruit Growers Sales Co.*; and

The Commission by its order of September 18, 1962, having adopted as the decision of the Commission the initial decision in Docket No. 8194 [p. 586 herein] wherein the hearing examiner issued his order to cease and desist in substantially the same form as set forth in the agreement herein;

The Commission now having concluded that the hearing examiner's initial decision herein is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed August 17, 1961, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent Pure Gold, Inc., 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 initial decision.