

IN THE MATTER OF  
GAMBLE-SKOGMO, INC., ET AL.

*Docket 5575. Complaint, July 15, 1948—Decision, Oct. 28, 1954*

Order of dismissal—following setting aside and remand by the Court of Appeals of the Commission's order to cease and desist, for the reason that the recommended decision was made by a substitute examiner who did not preside at the reception of evidence—of complaint charging a manufacturer and seller with violating section 3 of the Clayton Act and section 5 of the Federal Trade Commission Act through making sales of various merchandise to its 1600 retail dealer customers in many States on the condition that the purchasers not deal in similar goods of its competitors.

Before *Mr. Randolph Preston* and *Mr. Webster Ballinger*, hearing examiners.

*Mr. William C. Kern*, *Mr. William H. Smith* and *Mr. Andrew C. Goodhope* for the Commission.

*Mr. W. P. Berghuis*, of Minneapolis, Minn., for respondents

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Whereas, the United States Court of Appeals for the Eighth Circuit, by judgment entered on February 25, 1954, in the matter of *Gamble-Skogmo, Inc.*, a corporation, et al., Petitioners, vs. Federal Trade Commission, No. 14657,<sup>1</sup> set aside the decision and order of the Commission issued in this proceeding on June 11, 1952,<sup>2</sup> and remanded the cause to the Commission for proceedings consistent with the Court's opinion; and

Whereas, the Court's opinion was based on the view that the recommended decision, in which credibility evaluation of witnesses on a personal basis was a salient factor, was made by a substitute hearing examiner who did not preside at the reception of the evidence, and that this constituted a violation of Section 5 (c) of the Administrative Procedure Act, 5 U. S. C. A. § 1004 (c);

It appearing that the examiner who presided at the reception of the evidence is unavailable to the Commission, and, hence, that the procedural deficiency which provided the basis for the Court's decision could be remedied only by a trial *de novo*, either in whole or in part; and

It further appearing that the allegations in the complaint as well as the evidence in the record relate to acts and practices occurring

<sup>1</sup> 211 F. 2d 106.

<sup>2</sup> 48 F. T. C. 1396.

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more than six years ago and that the Commission has no information as to the respondents' current practices; and

The Commission being of the opinion that in the circumstances it is not in a position to find that a retrial of the case would be warranted:

*It is ordered* that the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to make such investigation of the current practices of the respondents as may be necessary and to take such further or other action with respect thereto as the circumstances may warrant.

## IN THE MATTER OF

## K. C. SNOW CROP DISTRIBUTORS, INC., ET AL.

CONSENT ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC.  
2 (C) OF THE CLAYTON ACT AS AMENDED

*Docket 6210. Complaint, June 1, 1954—Decision, Oct. 28, 1954*

Consent order requiring a Kansas City distributor of food products, chiefly frozen foods and frozen juices, to cease receiving from various sellers brokerage fees or commissions paid to its corporate brokerage agent on purchases made for its own account.

Before *Mr. John Lewis*, hearing examiner.

*Mr. Edward S. Ragsdale* and *Mr. Cecil G. Miles* for the Commission.

*Gage, Hillix, Moore, Park & Jackson*, of Kansas City, Mo., for respondents.

## COMPLAINT

The Federal Trade Commission, having reason to believe that parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U. S. C. Title 15, Section 13), as amended by the Robinson-Patman Act approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent K. C. Snow Crop Distributors, Inc., hereinafter sometimes referred to as Snow Crop, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri with its principal office and place of business located at 5th Street and Kaw River, Kansas City, Missouri. It was incorporated on or about March 7, 1947, with G. Arlon Wilson as President and Wendell R. Stopps as Secretary-Treasurer. These two individuals have owned and controlled the majority of the stock issued and outstanding in the corporate respondent since it was incorporated. During this entire period said respondent has been and is now engaged in the business of buying, selling and distributing frozen foods, frozen juices and other food products, all of which are hereinafter sometimes referred to as food products.

PAR. 2. Respondent Stopps & Wilson Brokerage Company, hereinafter sometimes referred to as the brokerage company, is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Missouri, with its principal office and place of business located at 500 East Third Street, Kansas City, Missouri. It was organized and incorporated on or about July 11, 1951, with Wendell R. Stoops as President and G. Arlon Wilson as Vice President. These two officials have owned since that date, and now own, approximately 98% of all the capital stock issued and outstanding in corporate respondent. Respondent has been since the date of its incorporation and is now engaged principally in the food brokerage business representing various principals in the sale of their food products, chiefly frozen foods and frozen fruit juices, hereinafter sometimes referred to as food products.

A substantial part of respondent brokerage company's business, however, is acting as buying agent in making purchases for the corporate respondent Snow Crop, on which purchases the brokerage company receives, on behalf of the individual respondents and corporate respondent Snow Crop, brokerage fees or commissions from various sellers. It is this part of the respondent brokerage company's business that is being challenged by this complaint.

PAR. 3. Respondent, G. Arlon Wilson, is a major stockholder in corporate respondent Snow Crop and from the date of its incorporation in 1947, until January 26, 1953, was its President. In fact, he and respondent Wendell R. Stoops now own and control, and have since respondent Snow Crop was organized owned and controlled, the majority of the issued and outstanding capital stock of this corporate respondent. Except for a short period, respondent Stoops was either Secretary or Secretary-Treasurer of respondent Snow Crop from the date of its incorporation until September 1951, at which time he withdrew from Snow Crop as an officer and became active in the management of the brokerage company, but retained his stock ownership in respondent Snow Crop. Since Snow Crop was organized, Wilson and Stoops have exercised and still exercise substantial if not complete authority and control over the business conducted by said corporate respondent Snow Crop, including the direction of its purchase, sales and distribution policies.

On January 26, 1953, Charles W. Hammon was designated President of respondent Snow Crop but at the time of his designation or appointment and as late as June 1953, he owned not more than 10 shares of the issued and outstanding capital stock of subject corporation.

PAR. 4. Respondent Wendell R. Stoops is President of corporate respondent Stoops & Wilson Brokerage Company, with respondent G. Arlon Wilson as Vice President. These two individual respondents

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have held these official positions with the brokerage company since it was organized in July 1951. These two individual respondents now own and control and have owned and controlled approximately 98% of the issued and outstanding capital stock of the brokerage company since the date of its organization and incorporation. As officers and majority stockholders of the brokerage company, respondents Wendell R. Stoops and G. Arlon Wilson now exercise and have exercised complete control and authority over the business conducted by the brokerage company, including its sales and distribution policies, since the date of its incorporation.

PAR. 5. The number of shares of capital stock issued and outstanding by the two corporate respondents hereinabove mentioned and the ownership of this stock by the individual respondents named herein are set out below:

	K. C. Snow Crop Distributors, Inc.	Stoops & Wilson Brokerage Co.
Stock issued and outstanding	369 shares	455 shares
owned by		
G. Arlon Wilson	100 shares	225 shares
Wendell R. Stoops	100 shares	225 shares

The remaining 169 shares of capital stock issued and outstanding in respondent Snow Crop are owned by nine other individuals, and the remaining five shares in the respondent brokerage company are owned by the Secretary of the company.

PAR. 6. In the course and conduct of the business of respondent Snow Crop since March 1947, and the business of respondent brokerage company since September 1951, said individual respondents, through corporate respondents, and each of them, have continuously made purchases of food products from or sales of food products for various sellers or manufacturers whose places of business were located in several States of the United States, other than the State in which said respondents are located. Said respondents, both individual and corporate, directly or indirectly, caused such food products, so purchased or sold, to be transported from said State of origin to destinations in other States. There has been at all times mentioned herein a continuous course of trade and commerce, as "commerce" is defined in the Clayton Act, in said food products, across State lines between said individual respondents through corporate respondents, and each of them, and the sellers of said food products. Said food products are sold and distributed for use, consumption or resale within various States of the United States.

PAR. 7. Since September 1951 said individual respondents G. Arlon Wilson and Wendell R. Stoops, and corporate respondent Snow Crop have made substantial purchases from sellers through cor-

porate respondent Stoops & Wilson Brokerage Company, on which purchases the various sellers granted or allowed said corporate respondent Stoops & Wilson Brokerage Company a commission or brokerage fee. During the year 1952 the purchases made by corporate respondent Snow Crop through the corporate respondent Brokerage Company amounted to approximately \$229,750.00 on which the sellers paid a brokerage or commission to corporate respondent Brokerage Company in the amount of approximately \$6,768.50.

PAR. 8. The acts and practices of respondents, corporate and individual, and each of them, individually and collectively since September 1951, in receiving and accepting commissions, brokerage, or other compensation, allowances or discounts in lieu thereof on purchases or sales of food products in commerce, as above-alleged, are in violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

#### DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 28, 1954, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

#### INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 1, 1954, charging them with having violated Section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act. Copies of said complaint were duly served upon respondents who thereafter appeared by counsel and entered into a stipulation for consent order. Said stipulation provides that respondents admit all the jurisdictional allegations of the complaint and waive the requirement for issuance of a decision containing findings of fact and conclusions of law, and further procedural steps before the hearing examiner and the Commission to which respondents may be entitled under the Clayton Act, as amended, or the Rules of Practice of the Commission. Respondents consent in said stipulation to the entry of an order to cease and desist in the form therein provided for, with the same force and effect as if said order had been made after a full hearing, presentation of evidence, and findings and conclusions thereon, and waive any and all right, power or privilege to challenge or contest the validity of said order. Said stipulation

further provides that the signing thereof and consent by respondents to the entry of the aforesaid order is for settlement purposes only and does not constitute an admission of any facts, other than those pertaining to jurisdiction, or that respondents have violated the law as alleged in the complaint.

The aforesaid stipulation for consent order and an accompanying affidavit of respondent G. Arlon Wilson having been submitted to the above-named hearing examiner, theretofore duly designated by the Commission, for appropriate action in accordance with Rule V of the Commission's Rules of Practice, and it appearing to the hearing examiner that said stipulation affords the basis for an appropriate disposition of this proceeding, said stipulation and accompanying affidavit are hereby accepted and ordered filed as part of the record in this proceeding and, in accordance therewith, the hearing examiner makes the following:

#### JURISDICTIONAL FINDINGS

PARAGRAPH 1. Respondent K. C. Snow Crop Distributors, Inc., is a corporation organized under and by virtue of the laws of the State of Missouri with its office and principal place of business located at 5th Street and Kaw Avenue, Kansas City, Kansas. Prior to June 8, 1954, the individual respondents G. Arlon Wilson and Wendell R. Stoops, were directors of, and owners of 211 shares of stock in, the corporate respondent, K. C. Snow Crop Distributors, Inc., on which date said individual respondents resigned as directors of the corporate respondent and sold their remaining shares of stock therein to certain employees of said corporation.

PAR. 2. Respondent Stoops & Wilson Brokerage Company is a corporation organized under and existing by virtue of the laws of the State of Missouri with its office and principal place of business located at 500 East Third Street, Kansas City, Missouri. The individual respondents, G. Arlon Wilson and Wendell R. Stoops, are now and were at all times mentioned in the complaint Vice-President and President, respectively, of the respondent Stoops & Wilson Brokerage Company, with their principal office located at the same address as said corporate respondent.

PAR. 3. In the course and conduct of the business of the corporate respondents, the individual respondents, through the corporate respondents, and each of them, have continuously made purchases of food products from or sales of food products for various sellers or manufacturers whose places of business were located in several States of the United States, other than the State in which said respondents are lo-

