

terminating any such contract subject to such reasonable restrictions concerning their re-entry into business as may be lawful within the jurisdiction in which any such purchaser is located;

8. Policing, enforcing or continuing in operation or effect any condition, agreement, understanding, act or practice from which respondents are ordered to cease and desist by the foregoing sections hereof;

9. Performing any act of intimidation or coercion through statements, oral or written, made by representatives of respondents, either at the time when a purchaser agrees to purchase any such products from respondents or during the course of any calls made upon such purchasers at their places of business or at any other place, or using any other plan, practice, system or method of doing business, for the purpose or with the effect of intimidating, coercing, or requiring purchasers of any such products from respondents to do anything which respondents are ordered to cease and desist from requiring such purchasers to do by any of the foregoing paragraphs hereof.

Provided, however, That nothing herein contained shall be construed to limit or otherwise affect any resale price maintenance contracts which respondents may enter into in conformity with Section 5 of the Federal Trade Commission Act as amended by the McGuire Act (15 U.S.C. Sec. 45).

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of July 1960, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

IN THE MATTER OF

KADIAK FISHERIES COMPANY ET AL.

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

Docket 7562. Complaint, Aug. 6, 1959—Decision, July 13, 1960

Consent order requiring Seattle packers of canned salmon and other sea food products to cease violating Sec. 2(c) of the Clayton Act by such practices

Complaint

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as giving reductions in price to certain buyers or their agents which were offset in whole or in part by reduction of either the primary or field broker's commission earned on such sales.

COMPLAINT

The Federal Trade Commission, having reason to believe that the 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, as amended (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents Kadiak Fisheries Company and Chignik Fisheries Company, hereinafter sometimes referred to as corporate respondents, are corporations organized, existing and doing business under and by virtue of the laws of the State of Washington, with their principal offices and places of business located at 1826 Exchange Building, Seattle, Wash.

Respondent Leo T. Krielsheimer, hereinafter sometimes referred to as individual respondent, is an individual and is president and sales manager of both of the corporate respondents. He directs and controls their business practices and policies, including their sales and distribution policies. His principal office and place of business is the same as that of the corporate respondents.

PAR. 2. All of the said respondents, both corporate and individual, have been for the past several years and are now engaged in the business of packing, selling and distributing canned salmon and other seafood products, all of which are hereinafter referred to as seafood products, to various buyers located in the several States of the United States. They sell and distribute their products through primary brokers, generally located in Seattle, Wash., and through field brokers located in various market areas throughout the United States.

When selling through primary brokers said respondents pay these brokers a commission or brokerage fee for their services, usually at the rate of 5% of the net selling price of the merchandise sold. When selling through field brokers respondents do not utilize a primary broker; instead, they pay a commission or brokerage fee usually at the rate of 2½% of the net selling price of the merchandise sold.

Respondents' annual volume of business during the past several years has been substantial.

PAR. 3. In the course and conduct of their business respondents, both corporate and individual, for the past several years have sold and distributed and are now selling and distributing seafood prod-

ucts in commerce, as "commerce" is defined in the aforesaid Clayton Act, to buyers located in the several States of the United States other than the State of Washington in which respondents are located. Respondents, and each of them, transport or cause such seafood products, when sold, to be transported from their place of business in the State of Washington to such buyers, or to the buyers' customers, located in various other States of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said seafood products across state lines between respondents and the respective buyers of said products.

PAR. 4. In connection with the sale and distribution of their seafood products in commerce, the corporate respondents, under the control and direction of the individual respondent, have made grants or allowances in substantial amounts in lieu of brokerage, or have made price concessions which reflect brokerage to certain buyers of said seafood products. One method used by respondents in making such grants or allowances, but not necessarily limited to this one method, was to give reduction in prices to certain buyers, or agents of buyers, which reductions were coupled with or were offset in whole or in part by a reduction of either the primary or field broker's commission or brokerage fee earned on said sales.

PAR. 5. The acts and practices of respondents, both corporate and individual, as alleged and described herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles, Mr. Charles D. Gerlinger and Mr. Franklin A. Snyder for the Commission.

Bogle, Bogle & Gates, of Seattle, Wash., by *Mr. Robert W. Graham* for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding, issued August 6, 1959, charges violation of Section 2(c) of the Clayton Act, as amended, in connection with the packing, selling, and distributing of canned salmon and other seafood products by respondents Kadiak Fisheries Company and Chignik Fisheries Company, Washington corporations, with their principal offices and places of business located at 1826 Exchange Building, Seattle, Wash., and individual respondent Leo T. Kreielsheimer, named in the complaint as Leo T. Krielsheimer, President and Sales Manager of both of said corporations and located at the same address as the corporate respondents.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel

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in support of the complaint, disposing of all the issues as to all parties in this proceedings, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

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

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and issues the following order:

ORDER

It is ordered, That Kadiak Fisheries Company, a corporation, and its officers, Chignik Fisheries Company, a corporation, and its officers, and Leo T. Krielsheimer, named in the complaint as Leo T. Krielsheimer, individually and as an officer of said respondent corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the sale

of seafood products in commerce, as "commerce" is defined in the Clayton Act, as amended, 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 seafood 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, the initial decision of the hearing examiner shall, on the 13th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That Kadiak Fisheries Company, a corporation, and Chignik Fisheries Company, a corporation, and Leo T. Krielsheimer, named in the complaint as Leo T. Krielsheimer, individually and as an officer of said corporations, 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 the order to cease and desist.

IN THE MATTER OF

RALPH NEWBURGER DOING BUSINESS AS CHICAGO
GOLD SMELTING & REFINING COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7750. Complaint, Jan. 18, 1960—Decision, July 15, 1960

Consent order requiring an individual in Chicago to cease representing falsely in advertising in newspapers, magazines, and other matter that he was the largest and oldest direct mail purchaser of precious metals and diamonds, and that he paid \$35 an ounce for gold; that he was a smelter or refiner, through use of "Smelting", "Refining", or similar words in his trade name and otherwise; and that he employed a staff of experts to assay and evaluate precious metals and diamonds from would-be sellers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Ralph Newburger, doing business as Chicago Gold Smelting & Refining Company, hereinafter referred to as respondent, has violated the provisions of said

Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ralph Newburger is an individual trading and doing business as Chicago Gold Smelting & Refining Company, with his office and principal place of business located at Room 1306, 6 East Monroe Street, Chicago 3, Ill.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the purchasing of gold, silver and other precious metals and diamonds, by mail, in commerce, and at all times mentioned herein has maintained a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the sale of gold, silver and other precious metals, and diamonds, by the public to him, respondent made certain statements and representations in newspapers of interstate circulation, trade papers, journals and magazines having national circulation, and in form letters, circulars, or other advertising material circulated by said respondent. Among and typical, but not all inclusive, of the statements and representations so made are the following:

It is a pleasure to let you know that we are the largest Direct-By-Mail gold purchasing agents in the United States.

When you deal with the Chicago Gold Smelting & Refining Company, you are taking no risk, because you are dealing with the largest and oldest Direct-By-Mail gold and diamond buying institution in the United States, * * *

Highest cash prices paid for Old and New Gold, * * *

\$35.00 per ounce is the standard price for the pure gold content.

Your articles will be carefully examined and weighed for their gold and diamond contents by our staff of gold and diamond experts.

PAR. 4. Through the use of the aforesaid statements and representations, and others similar thereto, and by the use of the words "Smelting" and "Refining" in his trade name, the respondent represents, directly and by implication:

1. That respondent is a smelter and refiner of gold and other precious metals and that he owns or controls the smeltery and refinery where the gold and other precious metals sold to him are smelted and refined.

2. That respondent is the largest and oldest direct mail purchaser of gold and diamonds.

3. That respondent pays \$35.00 an ounce for gold.

4. That respondent employs a staff of experts to assure the sellers of gold and diamonds a completely accurate assay and valuation of such products sent to him for sale.

PAR. 5. The said statements and representations, as hereinbefore set forth, are false, misleading and deceptive. In truth and in fact:

1. Respondent is not a smelter or refiner of gold and other precious metals, nor does respondent own, operate or control a smeltery or refinery.

2. Respondent is neither the largest nor oldest mail purchaser of gold or diamonds.

3. Respondent does not pay \$35.00 an ounce for gold.

4. Respondent does not maintain a staff of experts to assay and evaluate the gold or diamonds sent to him for sale.

PAR. 6. There is a preference on the part of a substantial portion of persons, having gold and other precious metals to sell, to deal direct with a smeltery or refinery, in the belief that by the elimination of middlemen the sellers will receive a higher price and other advantages.

PAR. 7. Respondent, in the course and conduct of his business, is engaged in competition in commerce with other individuals and with firms and corporations who are likewise engaged in the purchasing of gold, other precious metals and diamonds.

PAR. 8. The use by the respondent of the said trade name, statements and representations has had, and now has, the tendency and capacity to mislead a substantial portion of the public into the erroneous and mistaken belief the statements and representations were and are true, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to sell their gold and other precious metals and diamonds to the respondent. As a result of said practice, as aforesaid, trade in commerce has been, and is being, unfairly diverted to respondent from his competitors, and injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. William A. Somers for the Commission.

Mr. Jack Rosen, of Chicago, Ill., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on January 18, 1960, issued its complaint herein, charging the above-named respondent with having

