

IN THE MATTER OF

JAKE FELT, TRADING AS THE FRUIT AND PRODUCE EX-
CHANGE, M. E. CARTER AND COMPANY, MILTON K.
ALTSCHUL, INC., SAN PAT VEGETABLE COMPANY, A. O.
KOLBERG, ALBERT MILLER AND COMPANY, AND
CHASE AND COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (c) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED
BY SEC. 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3765. Complaint, Apr. 17, 1939—Decision, Dec. 22, 1939

Where (a) five corporations which (1) were engaged in producing and distributing produce, foodstuffs, and allied products and in selling and shipping same in interstate commerce to the below-described individual, jobber thereof, and to other purchasers, and which (2) were fairly representative of a large group of other sellers likewise thus engaged in producing, distributing, and selling such products as aforesaid to such individual and others, and which, as thus engaged, were in active competition with other producers and distributors of similar commodities in endeavoring to sell and ship the same in interstate commerce to said jobber or broker and competitors thereof; and (b) other sellers—

Transmitted, paid, and delivered to said individual jobber or broker so-called brokerage fees or commissions consisting of certain percentage of the quoted sales prices agreed upon between each of such sellers and said individual, or flat commission thus agreed upon, upon purchases made of them by said individual for the business operated by him as jobber of produce, foodstuffs, and allied products, and for corporate wholesale dealer in such products, of which he owned 84 percent of the outstanding stock and of which he was president and member of its board of directors, and the affairs of which he actively managed and conducted; and

Where said individual engaged as above set forth, in the course and conduct of his individual business and of corporate business controlled and operated by him as above described; in purchasing the stock requirements of each of said businesses from sellers residing in other States, including sellers above set forth, for shipment to him and storage in warehouse used jointly by the two businesses and sale therefrom by his said jobbing or brokerage business to divers wholesalers of such commodities and by said corporate business, controlled and operated by him as above, to divers retailers thereof—

Received and accepted so-called brokerage fees or commissions upon commodities resold by him as jobber as aforesaid to wholesale dealers therein, and upon commodities resold by said corporate wholesaler to divers retailers therein, while in fact sole party at interest in and active manager of said jobber or brokerage business and while president and member of board of directors of said corporate wholesaler and manager of its affairs, and in connection with which various purchasing transactions upon which such so-called brokerage fees or commissions were respectively paid and transmitted, and accepted and received, no services whatsoever had been or were being ren-

dered to, for, or on behalf of said various sellers by said individual trading as above set forth, or by said corporate wholesaler, but in which connection said individual was acting in fact for and on behalf of his own interest and as representative of said wholesaler controlled by him, with benefits possibly accruing to sellers solely incidental to buying services performed by said wholesaler:

Held, (1) That said corporate sellers, through granting and paying fees and commissions as brokerage to said individual upon his purchases, without services being rendered therefor, violated subsection (c) of Section 2 of the Clayton Act, as amended, and (2) that said individual, trading as above set forth, violated provisions of said subsection of such statute by receiving and accepting fees and commissions as brokerage upon purchases from said corporate and other sellers without services being rendered therefor.

Before *Mr. Charles E. O'Connor*, trial examiner.

Mr. John T. Haslett for the Commission.

Mr. Seward R. Moore, of Minneapolis, Minn., for San Pat Vegetable Co.

Warlow & Carpenter, of Orlando, Fla., for Chase & Co.

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, since June 19, 1936, have violated and are now violating the provisions of section 2 (c) of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Act of Congress entitled "An Act to amend section 2 (c) of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), hereby issues this its complaint against said parties respondent and states its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Jake Felt is an individual trading and doing business as the Fruit and Produce Exchange, with his principal office and place of business at Linden Station, Memphis, Tenn. The business engaged in by respondent Jake Felt under the said trade name is that of a jobber of produce, foodstuffs, and allied products.

Respondent M. E. Carter & Co. is a corporation organized and existing under and by virtue of the laws of the State of Tennessee, with its principal office and place of business at Linden Station, Memphis, Tenn. The business of the respondent M. E. Carter & Co. is that of a wholesale dealer in produce, foodstuffs and allied products.

Eighty-four percent of the outstanding stock of the respondent corporation M. E. Carter & Co. is owned by respondent Jake Felt who is president and a member of the board of directors thereof, and who actively manages and conducts its affairs.

PAR. 2. In the course and conduct of the aforesaid respective businesses engaged in by the respondents Jake Felt and M. E. Carter & Co., said respondent Jake Felt, trading as the Fruit and Produce Exchange, purchases the stock requirements of each of said businesses, said requirements consisting of produce, foodstuffs, and allied products, from sellers residing in States other than the State of Tennessee, among whom are the respondent sellers hereinafter named. Pursuant to such purchases commodities are shipped by said sellers from the respective States in which such sellers are located into and through the various States of the United States to the respondent Jake Felt, trading as the Fruit and Produce Exchange.

Said commodities when received are stored in a warehouse which is used jointly by the said respondent Jake Felt, trading as the Fruit and Produce Exchange, and respondent M. E. Carter & Co.

Sales from said stock of goods so purchased and stored in the common warehouse as aforesaid are made by respondent Jake Felt, trading as the Fruit and Produce Exchange, to divers wholesalers of such commodities, and by respondent M. E. Carter & Co. to divers retailers of such commodities.

PAR. 3. Respondent Milton K. Altschul, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 264 Wholesale Terminal Building, Los Angeles, Calif.

Respondent San Pat Vegetable Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business at Sinton, Tex.

Respondent A. O. Kolberg is a corporation organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business at McAllen, Tex.

Respondent Albert Miller & Co. is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 308 West Washington Street, Chicago, Ill.

Respondent Chase & Co. is a corporation organized and existing and by virtue of the laws of the State of Florida, with its principal office and place of business located at Sanford, Fla.

The respondents named in this paragraph will hereinafter be referred to as "seller respondents." Each of the seller respondents named in this paragraph is engaged in the sale of commodities to

respondent Jake Felt and other customers residing in States other than the respective States in which the seller respondents are located, pursuant to which sales, commodities are shipped and transported by each of the said seller respondents into and through various States of the United States to their respective customers. Said seller respondents are fairly typical and representative members of a large group or class of producers and sellers engaged in the common practice of selling some of their commodities in interstate commerce, as aforesaid, to respondent Jake Felt and to competitors of said respondent Jake Felt and respondent M. E. Carter & Co. Said group or class of sellers comprises a large number of such producers and sellers too numerous to be specifically named herein or to be brought before the Commission in this proceeding without manifest inconvenience and delay.

PAR. 4. In the course of the purchasing transactions by said respondent Jake Felt, trading as the Fruit and Produce Exchange, as set forth in paragraph 2 hereof, resulting in the delivery of commodities by the seller respondents and other sellers to respondent Jake Felt, said seller respondents and other sellers, since June 19, 1936, have transmitted, paid and delivered, and do transmit, pay and deliver, to said respondent Jake Felt, so-called brokerage fees or commissions, the same being a certain percentage of the quoted sales prices agreed upon between each of such sellers and respondent Jake Felt, and respondent Jake Felt, since June 19, 1936, has received and accepted and is receiving and accepting such so-called brokerage fees or commissions upon commodities resold by respondent Jake Felt, trading as the Fruit and Produce Exchange, to divers wholesale dealers in such products, and resold by respondent M. E. Carter & Co. to divers retail dealers, while said respondent Jake Felt is the sole party at interest in and is the active manager of the business engaged in under the trade name of the Fruit and Produce Exchange, and while 84 percent of the outstanding stock of the respondent M. E. Carter & Co. is owned by said respondent Jake Felt, who is president and a member of the board of directors thereof and actively manages its affairs.

In all the purchasing transactions hereinabove referred to, in connection with which the so-called brokerage fees or commissions have been and are paid and transmitted by said seller respondents and other sellers and have been and are accepted and received by said respondent Jake Felt, no services whatsoever in connection with said purchases have been rendered, or are now being rendered, to, for, or on behalf of said seller respondents or any other seller by either said respondent Jake Felt, trading as the Fruit and Produce Exchange, or respondent M. E. Carter & Co.

Complaint

30 F. T. C.

PAR. 5. The transmission and payment of said so-called brokerage fees or commissions by the seller respondents and other sellers to and the receipt and acceptance thereof by the respondent Jake Felt upon the purchases of said respondent Jake Felt, trading as the Fruit and Produce Exchange in the manner and under the circumstances hereinabove set forth, is in violation of the provisions of section 2 (c) of the above-mentioned act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the act of Congress entitled "An Act to amend section 2 of an act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, section 13) and for other purposes," approved June 19, 1936 (the Robinson-Patman Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act), as amended by section 1 of an act entitled "An Act to amend section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, section 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on April 17, 1939, issued and served its complaint in this proceeding upon the parties respondent named in the caption hereof charging them with violating the provisions of paragraph (c) of section 2 of the said act as amended.

After the issuance and service of said complaint an answer admitting all the material allegations as set forth in the complaint to be true was filed on behalf of the individual respondent Jake Felt, the respondent Jake Felt trading as the Fruit and Produce Exchange and the respondent M. E. Carter & Co. Answers admitting and denying various material facts alleged in the complaint were also filed on behalf of all other respondents. Pursuant to written notice to all respondents herein of the date, place and time hearing would be held, testimony and other evidence in support of the allegations of said complaint were introduced by an attorney for the Commission before an examiner for the Commission, and no opposition to the allegations of the complaint was introduced, nor were there any appearances made by the respondents Milton K. Altschul, Inc., San

Pat Vegetable Co., A. O. Kolberg, Albert Miller & Co. and Chase & Co.

Thereafter, admissions of facts alleged in the complaint as to place of incorporation of respondents A. O. Kolberg and Albert Miller & Co. and waivers of intervening procedure, briefs and oral argument were received from all respondents, except the respondent Milton K. Altschul, Inc. The foregoing together with testimony and other evidence, were duly received and filed in the office of the Commission; the respondent Milton K. Altschul, Inc., was apprized of his procedural rights in connection with the filing of brief and oral argument before the Commission and failed to reply to communications sent him by the Commission, and the Commission having duly considered the same and now being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Jake Felt is an individual trading and doing business as the Fruit and Produce Exchange, with his principal office and place of business at Linden Station, Memphis, Tenn.

The business engaged in by the respondent Jake Felt under the said trade name is that of jobber of produce, foodstuffs and allied products.

The respondent M. E. Carter & Co. is a corporation organized and existing under and by virtue of the laws of the State of Tennessee with its principal office and place of business located at Linden Station, Memphis, Tenn.

The business of the respondent M. E. Carter & Co. is that of a wholesale dealer in produce, foodstuffs, and allied products. Eighty-four percent of the outstanding stock of the respondent corporation M. E. Carter & Co. is owned by the respondent Jake Felt, who is president and a member of the board of directors thereof, and who actively manages and conducts its affairs.

PAR. 2. Respondent Milton K. Altschul, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 264 Wholesale Terminal Building, Los Angeles, Calif.

Respondent San Pat Vegetable Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at Sinton, Tex.

Findings

30 F. T. C.

Respondent A. O. Kolberg is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at McAllen, Tex.

Respondent Albert Miller and Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 308 West Washington Street, Chicago, Ill.

Respondent Chase & Co. is a corporation organized and existing under and by virtue of the laws of the State of Florida with its principal office and place of business located at Sanford, Fla.

This group of respondents will hereinafter be referred to as "seller respondents."

The seller respondents are fairly representative of a large group of sellers engaged in producing and distributing produce, foodstuffs, and allied products which they sell and ship in interstate commerce to the respondent Jake Felt, trading as The Fruit and Produce Exchange, and to other purchasers thereof. Each of the seller respondents actively competes with other producers and distributors of similar commodities in endeavoring to sell and ship the same in interstate commerce to the broker respondent and to competitors of the broker respondent.

PAR. 3. Since June 19, 1936, in the course and conduct of the respective businesses engaged in by the respondents Jake Felt and M. E. Carter & Co., said respondent Jake Felt, trading as The Fruit and Produce Exchange, has purchased the stock requirements of each of said businesses, said requirements consisting of produce, foodstuffs, and allied products from sellers residing in States other than the State of Tennessee, among whom are the seller respondents herein named.

Pursuant to such purchases, commodities are shipped by said sellers from the respective States in which such sellers are located into and through the various States of the United States to the respondent Jake Felt, trading as The Fruit and Produce Exchange.

Such commodities, when received, are stored in a warehouse which is used jointly by the said respondent Jake Felt, trading as The Fruit and Produce Exchange, and the respondent M. E. Carter & Co.

Sales from said stock of goods so purchased and stored in the common warehouse, as aforesaid are made by the respondent Jake Felt, trading as The Fruit and Produce Exchange, to divers wholesalers of such commodities and by respondent M. E. Carter & Co. to divers retailers of such commodities.

PAR. 4. In the course and conduct of the business engaged in by the said respondent Jake Felt, trading as The Fruit and Produce Exchange, wherein commodities are delivered by the said seller respondents and other sellers to the respondent Jake Felt, said seller respondents and other sellers, since June 19, 1936, have transmitted, paid and delivered, and do transmit, pay, and deliver, to said respondent Jake Felt, trading as The Fruit and Produce Exchange, so-called brokerage fees or commissions, the same being a certain percentage of the quoted sales prices agreed upon between each of such sellers and respondent Jake Felt, or a flat commission agreed upon between each of such sellers and respondent Jake Felt, and respondent Jake Felt, since June 19, 1936, has received and accepted, and does receive and accept, such so-called brokerage fees or commissions upon commodities resold by said respondent Jake Felt, trading as The Fruit and Produce Exchange, to divers wholesale dealers in such products, and resold by respondent M. E. Carter & Co. to divers retail dealers, while said respondent Jake Felt is the sole party at interest in and is the active manager of the business engaged in under the trade name of The Fruit and Produce Exchange, and while said respondent Jake Felt is president and a member of the board of directors of the respondent corporation M. E. Carter & Co. and actively manages its affairs.

In all the purchasing transactions engaged in by the said respondent Jake Felt in connection with which so-called brokerage fees or commissions have been and are paid and transmitted by said seller respondents and other sellers, and have been and are accepted and received by said respondent Jake Felt, no services whatsoever in connection with said purchases have been rendered or are now being rendered to, for, or on behalf of said seller respondents or any other seller by said respondent Jake Felt, trading as The Fruit and Produce Exchange, or the respondent M. E. Carter & Co.

In all matters and transactions wherein the respondent Jake Felt, trading as The Fruit and Produce Exchange, negotiated or dealt with sellers in connection with the purchase of commodities by said respondent Jake Felt, trading as The Fruit and Produce Exchange, the said respondent Jake Felt was acting in fact for and on behalf of his own interest and as a representative of the respondent M. E. Carter & Co., which is controlled by the said respondent Jake Felt, and any benefits which may have accrued to the seller respondents or other sellers therefrom were benefits solely incidental to the buying services performed by the respondent M. E. Carter & Co.

Order

30 F. T. C.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings of fact, the Commission concludes that the respondents Milton K. Altschul, Inc., San Pat Vegetable Co., A. O. Kolberg, Albert Miller & Co., and Chase & Co., have violated and are now violating the provisions of subsection (c), section 2, of the Clayton Act, as amended, by granting and paying fees and commissions as brokerage to the respondent Jake Felt, individually and trading as The Fruit and Produce Exchange, upon his purchases without services being rendered therefor.

The Commission further concludes that the respondent Jake Felt, individually and trading as The Fruit and Produce Exchange, has violated and is now violating the provisions of subsection (c) of section 2 of the said statute by receiving and accepting fees and commissions as brokerage upon purchases from the seller respondents and other sellers without services being rendered therefor.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer filed herein by the respondent Jake Felt, individually, trading as The Fruit and Produce Exchange, and as president of the respondent M. E. Carter & Co., admitting all the material allegations of the complaint to be true, the answers, admitting and denying various material facts of the complaint of the other respondents and admissions of facts alleged in the complaint as to place of incorporation of respondents A. O. Kolberg and Albert Miller & Co., testimony and other evidence taken before an examiner for the Commission theretofore duly designated by it in support of said complaint, and waivers of intervening procedure, briefs, and argument were received from all respondents, except the respondent Milton K. Altschul, Inc. The foregoing were duly received and filed in the office of the Commission. The respondent Milton K. Altschul, Inc., was apprized of his procedural rights in connection with the filing of brief and oral argument before the Commission and failed to reply to communications sent him by the Commission, and the Commission having made its findings as to the facts and conclusion, which findings and conclusion are hereby made a part hereof, that said respondents have violated the provisions of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, as amended

by the Robinson-Patman Act approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That the respondents Milton K. Altschul, Inc., San Pat Vegetable Co., A. O. Kolberg, Albert Miller & Co., and Chase & Co., and their officers, representatives, agents, and employees, in connection with the sale and distribution of commodities in interstate commerce, do forthwith cease and desist from paying or granting to the respondent Jake Felt, individually, trading as The Fruit and Produce Exchange, or under any other name, any fee or commission paid as brokerage or any allowance in lieu thereof upon the purchases made by the respondent Jake Felt without services being rendered therefor by the respondent Jake Felt.

It is further ordered, That the respondent Jake Felt, individually and trading as The Fruit and Produce Exchange, his representatives, agents, and employees, either in their capacities as employees of the respondent Jake Felt or in their individual capacities, in connection with the purchase of commodities in interstate commerce by the respondent Jake Felt, individually and trading as The Fruit and Produce Exchange, do forthwith cease and desist from accepting or receiving from sellers any fees or commissions as brokerage or any allowance in lieu thereof.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent M. E. Carter & Co. for the reason that the record does not disclose that any brokerage or commissions or any allowances or discounts in lieu thereof have been paid, granted, or transmitted to the respondent M. E. Carter & Co.

It is further ordered, That the parties respondent shall within 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.

IN THE MATTER OF
UNIVERSAL CORDAGE COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3612. Complaint, Sept. 28, 1938—Decision, Dec. 27, 1939

Where a corporation engaged in manufacturing remade rope and cordage from reclaimed Manila fiber, and in sale and distribution of its said products to customers in various States and in the District of Columbia—

- (a) Caused the words "Pure Manila" to appear on labels and brands affixed to its remade rope and cordage and made use of said words in designating its products on announcements and invoices to dealers, jobbers, and distributors, and stenciled the same in the branding of burlap containers thereof, facts being its said product, labeled, branded, and advertised as above set out, was not, as understood by substantial portion of purchasing public from words "Pure Manila," rope or cordage made of new and unused fiber or material theretofore unused for rope or cordage, with each fiber going into the product from the beginning of the rope-making process entirely new, but was restranded and assembled by it from reclaimed fiber obtained from old, used and discarded rope, and while there is a difference in appearance of such a product made from new material and one made from that which is used or discarded which expert in trade might detect, substantial portion of purchasing public cannot determine by appearance of rope such difference, and custom and practice, known to purchasers and users of rope and cordage, has been generally adopted by manufacturers, distributors, and sellers thereof of so marking or branding their products as to indicate presence of old or used fiber when employed in manufacture thereof; and
- (b) Represented itself to be "new manufacturers of pure Manila rope" in statements to the trade through the medium of the mail, facts being its factory equipment was less than equipment and machinery used by manufacturers in making rope and cordage of new materials, it eliminated approximately two-thirds of rope-making in its process of using fiber of old product, and about two-thirds of labor cost of making rope from new material by assembling from reclaimed fiber obtained from old, used, and discarded rope, its product so as to be enabled thereby to sell to purchasing public at substantially lower prices than could be offered by manufacturers of Manila rope and cordage of new fiber and material, its products;

With effect of misleading and deceiving many dealers and members of purchasing public into erroneous and mistaken beliefs induced as aforesaid and with result that trade in commerce was thereby diverted unfairly to it from competitors who do not misrepresent the nature, character, and quality of the material used in the manufacture of rope and cordage and otherwise misrepresent their goods; to injury of competitors in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition.