

Complaint

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IN THE MATTER OF
MITCHELL F. BRICE, TRADING AS PARR SALES
COMPANY

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

Docket 4233. Complaint, Aug. 13, 1940—Decision, Nov. 2, 1940

Where an individual who (1) was president, secretary-treasurer and director of, and owner of a large majority of the stock in a corporation engaged in a general wholesale merchandise business, and which placed orders for a substantial portion of the goods, wares, and merchandise, and particularly food stuffs, required in the ordinary conduct of its business with sellers located mostly in other States, and (2) was co-owner in a brokerage firm in the same city with another to whom, as his employee in various enterprises owned and controlled by him, he paid as compensation for services rendered a substantial amount of the brokerage fees and commissions received by said firm, through which said corporate wholesaler made its purchases aforesaid from sellers in other States mostly—

Accepted and received, through said brokerage firm, as brokerage fees or commissions, certain percentages paid by such sellers on purchases made through firm in question by corporate wholesaler aforesaid, and in which transactions said individual was agent and acted in fact for and in behalf of aforesaid corporate wholesaler:

Held, That in accepting and receiving certain percentages of the sales prices upon purchases of commodities of said corporate wholesaler, in interstate commerce as aforesaid set forth, as brokerage fees or commissions, said individual, in his individual capacity and while trading as member of such brokerage firm, violated provisions of section 2 (c) of Clayton Act, as amended by Robinson-Patman Act.

Mr. J. T. Haslett, for the Commission.

Mr. Duncan Graham, of Vidalia, Ga., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C., title 15, sec. 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. Tanner-Brice Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at Vidalia, Ga., is engaged in a general wholesale merchandise business and operates

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a chain of retail grocery stores under the trade name of Sims Stores, the principal ones of which are located at Vidalia, Swainsboro, Dublin, Douglas, and Baxley, Ga. Practically all the merchandise sold by the Sims Stores is purchased from the Tanner-Brice Co., Inc.

PAR. 2. The respondent, Mitchell F. Brice, an individual residing in the city of Vidalia, Ga., is now and has been since June 19, 1936, president, secretary-treasurer, director, and a major stockholder in Tanner-Brice Co., Inc. Said respondent Mitchell F. Brice owns and controls 83 percent of the outstanding capital stock, and actively manages and conducts the business of said Tanner-Brice Co., Inc.

PAR. 3. Respondent Mitchell F. Brice is a member of a firm engaged in the brokerage business under the trade name Parr Sales Co., maintaining an office and place of business in Vidalia, Ga.

The Parr Sales Co. is a firm owned by respondent Mitchell F. Brice and Francis K. Graham. Said Francis K. Graham is a former employee of the Tanner-Brice Co., Inc., and is now employed by the said Mitchell F. Brice to render services to various other enterprises owned and controlled by respondent Mitchell F. Brice.

PAR. 4. Tanner-Brice Co., Inc., places orders for a substantial portion of the goods, wares, and merchandise, particularly foodstuffs, required in the ordinary conduct of its business with sellers who are in most cases located in States of the United States other than the State in which said Tanner-Brice Co., Inc., is located, through the brokerage firm of Mitchell F. Brice and Francis K. Graham trading as Parr Sales Co. As a result of the transmission and execution of said orders, as aforesaid, goods, wares and merchandise, particularly foodstuffs, are, in the case of each such order, and in a continuous succession of such orders, sold, transported and delivered by one or more of such sellers across State lines to the Tanner-Brice Co.

PAR. 5. In the course and conduct of the buying and selling transactions hereinabove referred to resulting in the transportation and delivery of goods, wares, and merchandise, particularly foodstuffs, in interstate commerce from one or more sellers to said Tanner-Brice Co., Inc., sellers have transmitted and paid, and do transmit and pay, to the brokerage firm of Mitchell F. Brice and Francis K. Graham, trading as the Parr Sales Co., brokerage fees or commissions, the same being a certain percentage (usually from 2½ percent to 5 percent) of the sales prices of such purchases.

Since June 19, 1936, sellers have paid brokerage fees and commissions to, and the same have been received by, the brokerage firm of Mitchell F. Brice and Francis K. Graham, trading as Parr

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Sales Co., upon the purchases of Tanner-Brice Co., Inc., in the manner hereinabove described in substantial amounts.

PAR. 6. In all of the transactions of purchase and sale hereinabove referred to, since June 19, 1936, the respondent Mitchell F. Brice has been the agent, and has acted in fact for and in behalf of the Tanner-Brice Co., Inc.

PAR. 7. A substantial amount of the brokerage fees and commissions received by the brokerage firm of Mitchell F. Brice and Francis K. Graham trading as Parr Sales Co. in the manner aforesaid since June 19, 1936, has been paid to Francis K. Graham as compensation for services rendered by Francis K. Graham in his respective capacities as an employee of the various enterprises owned and controlled by respondent Mitchell F. Brice.

PAR. 8. The transmission and payment of brokerage fees and commissions by sellers to said respondent Mitchell F. Brice as a member of the brokerage firm trading as the Parr Sales Co., and the receipt and acceptance of such brokerage fees and commissions by said respondent Mitchell F. Brice upon the purchases of the Tanner-Brice Co., Inc., in the manner and form hereinabove set forth, is in violation of the provisions of subsection (c) of section 2 of the act described in the preamble hereof.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to 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, the Clayton Act, as amended by an Act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C. title 15, sec. 13), the Federal Trade Commission on the 13th day of August 1940, issued and served its complaint in this proceeding upon respondent Mitchell F. Brice, charging the respondent with violation of the provisions of subsection (c) of section 2 of the said act.

After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that

section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by the respondent, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Tanner-Brice Co., Inc., a corporation, organized and existing under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at Vidalia, Ga., is engaged in a general wholesale merchandise business.

PAR. 2. The respondent, Mitchell F. Brice, an individual residing in the city of Vidalia, Ga., is now and has been since June 19, 1936, president, secretary-treasurer, director, and stockholder in Tanner-Brice Co., Inc.

PAR. 3. The Parr Sales Co. is a firm engaged in the brokerage business with an office and place of business in Vidalia, Ga., and is owned by respondent Mitchell F. Brice and Francis K. Graham. Said Francis K. Graham is a former employee of the Tanner-Brice Co., Inc., and is now employed by the said Mitchell F. Brice to render services to various other enterprises owned and controlled by respondent Mitchell F. Brice.

PAR. 4. Tanner-Brice Co., Inc., places orders for a substantial portion of the goods, wares and merchandise, particularly food stuffs, required in the ordinary conduct of its business with sellers, who are in most cases located in States of the United States other than the State which said Tanner-Brice Co., Inc., is located, through the brokerage firm of Mitchell F. Brice and Francis K. Graham, trading as the Parr Sales Co. As a result of the transmission and execution of said orders as aforesaid goods, wares and merchandise, particularly food stuffs, are, in the case of each such order and in a continuous succession of such orders, sold, transported, and delivered by one or more of such sellers across State lines to the Tanner-Brice Co., Inc.

PAR. 5. In the course and conduct of the buying and selling transactions, hereinabove referred to, resulting in the transportation and delivery of goods, wares and merchandise, particularly food stuffs, in interstate commerce from one or more sellers to said Tanner-Brice Co., Inc., sellers have transmitted and paid, and do transmit and pay, to the brokerage firm of Mitchell F. Brice and Francis K. Graham, trading as the Parr Sales Co., brokerage fees or commissions, the same being a certain percentage (usually from 2½ percent to 5 percent) of the sales prices of such purchases.

Since June 19, 1936, and while respondent Mitchell F. Brice owned and controlled 83 percent of the outstanding capital stock and actively

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managed and conducted the business of the said Tanner-Brice Co., Inc., sellers have paid brokerage fees and commissions to, and the same have been received by, the brokerage firm of Mitchell F. Brice and Francis K. Graham, trading as Parr Sales Co., upon the purchases of Tanner-Brice Co., Inc., in the manner hereinabove described in substantial amounts.

PAR. 6. In all of the transactions of purchase and sale hereinabove referred to since June 19, 1936, the respondent Mitchell F. Brice has been the agent and acted in fact for, and in behalf of, the Tanner-Brice Co., Inc.

PAR. 7. A substantial amount of the brokerage fees and commissions received by the brokerage firm of Mitchell F. Brice and Francis K. Graham, trading as Parr Sales Co., in the manner aforesaid since June 19, 1936, has been paid to Francis K. Graham as compensation for services rendered by Francis K. Graham in his respective capacities as an employee of the various enterprises owned and controlled by respondent Mitchell F. Brice.

CONCLUSION

In accepting and receiving brokerage fees or commissions, the same being a certain percentage (usually from 2½ percent to 5 percent) of the sales prices upon purchases of commodities of the Tanner-Brice Co., Inc., in interstate commerce as set forth in the foregoing findings as to the facts, the respondent Mitchell F. Brice, individually and while trading under the firm name and style of Parr Sales Co., violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and substitute answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That in purchasing commodities in interstate commerce the respondent, Mitchell F. Brice, individually, and trading under the firm name and style of Parr Sales Co., or any other name, his agents, employees, and representatives, directly or through any corporate or other device, do forthwith cease and desist from:

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1. Accepting from sellers directly or indirectly on purchases of commodities of the Tanner-Brice Co., Inc., any brokerage fees or commissions or any allowance or discount in lieu of brokerage in whatever manner or form said brokerage fees, allowances, and discounts may be offered, allowed, granted, paid, or transmitted; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof upon purchase of commodities made for respondent's own account.

It is further ordered, That the said respondent Mitchell F. Brice shall within 60 days after service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth by the Commission.

IN THE MATTER OF
R. F. BEMPORAD & 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 4238. Complaint, Aug. 15, 1940—Decision, Nov. 2, 1940

Where a corporation engaged in importing, distributing, and selling rugs to various wholesale and retail dealer-purchasers in various other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of rugs in commerce as aforesaid, and including many who do not misrepresent the nature of their product or the place or method of manufacture thereof, and do not furnish their dealer-customers with means and instrumentalities for deceiving the public—

- (a) Made use of names of Chinese cities "Hong Kong" and "Canton," and of words connoting China, or "Kina," to describe, designate and refer to certain of its rugs in invoices and circulars addressed to dealers and in connection with sale of such rugs thereto, and in labels attached to said products and plainly discernible to members of purchasing public upon said rugs' display for resale by retailers thereof;

Notwithstanding fact said "Hong Kong" and "Canton" rugs were not made in China, but in Italy and Belgium, respectively, and of cotton and on power looms, and they did not have the structure or all the characteristics of the true Chinese Oriental rugs, and individual threads were not knotted in distinctive manner of such rugs, and they were made from different materials and were not true Chinese Oriental rugs, as long understood by substantial portion of purchasing public as meaning rugs made in China by hand in the same manner and possessing the same qualities and characteristics as the Oriental rugs, and, as such, long held in great public esteem because of their texture, beauty, durability, and other qualities;

With effect of inducing misleading and erroneous belief that said rugs, thus designated, which so closely resembled Chinese Oriental rugs in appearance that a large portion of the purchasing public was unable to distinguish such "Hong Kong" and "Canton" rugs from true Chinese Orientals, were made in China by hand and were in all respects, including materials, true Chinese Oriental rugs, and with result that said products were readily accepted as being genuine Chinese Oriental rugs, for which there is decided preference on part of many of purchasing public;

- (b) Made use of words "Mahah" and "Kirma," and of word "Orienta," which, respectively, simulated Oriental rug names "Mahal" and "Kirman" and word "Oriental," and of name of Oriental city "Bagdad," to describe, designate, and refer to certain of its rugs in invoices and circulars addressed to dealers, and, in connection with sale of said products thereto, and in labels attached to said rugs and plainly discernible to members of purchasing public upon said rugs' display and resale by retailers thereof;

Notwithstanding fact said "Kirma" and "Mahah" rugs were not in fact true Oriental "Kirman" and "Mahal" rugs, and said "Orienta" and "Bagdad" rugs were not made in the Orient by hand and in all respects, including materials, true Oriental rugs, but said "Mahah" and "Bagdad" products