

Complaint

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## IN THE MATTER OF

H. STANLEY JONES, H. EDWIN JONES AND MAURICE C. BERKELEY, DOING BUSINESS AS HOWARD E. JONES & CO., KING FOODS COMPANY, BALTIMORE SALES SERVICE COMPANY, BALTIMORE MACARONI COMPANY, AND OCONO 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 4215. Complaint, Aug. 2, 1940—Decision, Nov. 30, 1940*

Where three individuals engaged as partners and under various trade names, in business of acting as brokers in sale of food products, and particularly canned fruits and vegetables, and also engaged in buying and selling such products for their own account, and in buying, selling, and distributing, in the course of their said businesses, such food products in commerce among the various States, and in causing products purchased by them for their own account to be shipped and transported to them from sellers' various places of business, including, in case of many, those located and doing business in other States, and in causing products sold for their own account to be shipped and transported to their customers located and doing business, in case of many, also in other States—

Received, in course and conduct of their aforesaid business of buying food products for their own account, as above set forth, and trading under various firm names and styles, from numerous sellers, brokerage fees or allowances or discounts in lieu thereof on many of their said own account purchases:

*Held*, That said individuals, in receiving and accepting brokerage fees or allowances or discounts in lieu thereof from sellers upon their purchases of commodities as above set forth, violated provisions of section 2 (c) of Clayton Act, as amended by the Robinson-Patman Act.

*Mr. S. G. Churchill*, for the Commission.

*Allers & Cochran*, of Baltimore, Md., for respondents.

## COMPLAINT

Pursuant to the provisions of an act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act (U. S. C., title 15, sec. 13), as amended by an act of Congress, approved June 19, 1936, commonly known as the Robinson-Patman Act, 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 been and are now violating

the provisions of subsection (c) of section 2 of said act as amended, issues its complaint against said respondents and states it charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondents, H. Stanley Jones, H. Edwin Jones, and Maurice C. Berkeley, are copartners doing business, principally under the firm name and style of Howard E. Jones & Co., but also under the firm names and styles of King Foods Co., Baltimore Sales Service Co., Baltimore Macaroni Co., and Ocono Co. The respondents have their principal office and place of business at 206 South Broadway Street, Baltimore, Md.

PAR. 2. Respondents are now engaged and for many years prior hereto have been engaged in the business of acting as brokers in the sale of food products, particularly canned fruits and vegetables, said business having been carried on by them, principally under the firm name and style of Howard E. Jones & Co.

Respondents are also now engaged and for many years prior hereto have been engaged in the business of buying and selling for their own account food products, particularly canned fruits and vegetables, said business having been carried on by them principally under the firm name and style of King Foods Co., but also under the firm names and styles of Howard E. Jones & Co., Baltimore Sales Service Co., Baltimore Macaroni Co., and Ocono Co.

Respondents buy, sell, and distribute said food products aforementioned in commerce between and among the various States of the United States. Respondents cause the products which they purchase for their own account to be shipped and transported to them from the various places of business of those sellers from whom respondents purchase said products, many of such sellers being located and doing business in States other than the State of Maryland. Respondents cause the products which they have sold for their own account to be shipped and transported, pursuant to said sales, to their customers, many of such customers being located and doing business in States other than the State of Maryland.

PAR. 3. In the course and conduct of their business of buying food products for their own account in commerce, as aforesaid, the respondents, trading under the firm names and styles aforesaid, have been and are now receiving and accepting from numerous sellers brokerage fees, or allowances or discounts in lieu thereof, on many of said purchases for their own account.

PAR. 4. The aforesaid acts of respondents constitute a violation of subsection (c) of section 2 of the Clayton Act, as amended by Robinson-Patman Act, approved June 19, 1936.

## Findings

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## 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 2d day of August 1940, issued and served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of the provisions of subsection (c) of section 2 of the said act.

Said respondents duly filed their answer to said complaint, which answer admits all the material allegations of fact set forth in said complaint. Said answer further waives all intervening procedure herein and further hearing as to said facts and also waives the filing of briefs and the presentation of any oral argument. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and answer as aforesaid, 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 respondents, now makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** Respondents, H. Stanley Jones, H. Edwin Jones, and Maurice C. Berkeley, are copartners doing business, principally under the firm name and style of Howard E. Jones & Co., but also under the firm names and styles of King Foods Company, Baltimore Sales Service Company, Baltimore Macaroni Company, and Ocono Company. The respondents have their principal office and place of business at 206 South Broadway Street, Baltimore, Md.

**PAR. 2.** Respondents are now engaged and for many years prior hereto have been engaged in the business of acting as brokers in the sale of food products, particularly canned fruits and vegetables, said business having been carried on by them, principally under the firm name and style of Howard E. Jones & Co.

Respondents are also now engaged and for many years prior hereto have been engaged in the business of buying and selling for their own account food products, particularly canned fruits and vegetables, said business having been carried on by them principally under the firm name and style of King Foods Company, but also under the firm

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names and styles of Howard E. Jones & Co., Baltimore Sales Service Co., Baltimore Macaroni Co., and Ocono Co.

PAR. 3. Respondents buy, sell, and distribute said food products mentioned in paragraph 2 hereof in commerce between and among the various States of the United States. Respondents cause the products which they purchase for their own account to be shipped and transported to them from the various places of business of those sellers from whom respondents purchase said products, many of such sellers being located and doing business in States other than the State of Maryland. Respondents cause the products which they have sold for their own account to be shipped and transported, pursuant to said sales, to their customers, many of such customers being located and doing business in States other than the State of Maryland.

PAR 4. In the course and conduct of their business of buying food products for their own account in commerce, as aforesaid, the respondents, trading under the firm names and styles aforesaid, have since June 19, 1936, received from numerous sellers brokerage fees, or allowances or discounts in lieu thereof, on many of said purchases for their own account.

## CONCLUSION

In receiving and accepting brokerage fees or allowances and discounts in lieu thereof from sellers upon their purchases of commodities as set forth in paragraph 4 hereof, the respondents have 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 the answer of the respondents, in which answer said respondents admit all of the material allegations of facts set forth in said complaint, and waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the respondents have 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 the course and conduct of their business of buying food products for their own account in commerce, the respondents, H. Stanley Jones, H. Edwin Jones, and Maurice C. Berkeley, copartners doing business under the firm names and styles of Howard E. Jones & Co., King Foods Co., Baltimore Sales Service

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Co., Baltimore Macaroni Co., and Ocono Co., or any other name, their agents, employees, and representatives, do forthwith cease and desist from:

1. Making purchases of commodities for respondents' own account at a price or on a basis which reflects a deduction, or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling commodities to other purchasers thereof, or any amount representing or reflecting, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of commodities made for said sellers by, or by said sellers through their said brokers; 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 and discount in lieu thereof upon purchases of commodities made for respondents' own account.

*It is further ordered,* That the respondents named in the caption hereof shall, within 30 days after service upon them of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

## Syllabus

## IN THE MATTER OF

A. FLETCHER SISK, THEODORE E. FLETCHER, AND  
HAROLD E. STARK, TRADING AS ALBERT W. SISK &  
SON

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 4275. Complaint, Aug. 28, 1940—Decision, Nov. 30, 1940*

Where three individuals engaged in Maryland as field brokers, in acting as agents of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers, and as thus engaged in effecting, in some instances, sales of such commodities for sellers through corresponding or local brokers whom they employed to assist them in making such sales, and in effecting, in other instances, sales of such commodities directly to purchasers, and in effecting sales as aforesaid, in either event, to purchasers in States other than that in which respective sellers were located, and in compensating, in those cases in which sales were effected through corresponding or local brokers employed by them, such corresponding or local brokers through a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to them, and amounting to, usually 4 percent of purchase price paid by purchaser for commodities in question—

(a) Granted and allowed brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts to purchasers in those cases in which they effected, as above set forth, sale of commodities in question directly to purchasers, rather than through the medium of said corresponding or local brokers, as above described:

*Held*, That said individuals, in granting and allowing brokerage fees and commissions, or allowances and discounts in lieu thereof, to purchasers in connection with their respective purchases of commodities from sellers, as above set forth, violated section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act; and

Where said individuals, engaged in the business of purchasing for their own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers, such canned fruits and vegetables, from sellers in other States, pursuant to which purchases commodities were shipped and transported by sellers from respective States in which located across State lines, either to them or, pursuant to their instructions and directions, to respective purchasers to whom they had resold such commodities, and from, in many instances, sellers, located in State of Maryland, and who, pursuant to their instructions and directions, caused commodities thus purchased by them to be shipped and transported from said State across State lines to respective purchasers to whom they had resold such commodities—

(b) Received and accepted from sellers, in connection with purchases of such commodities by them for their own account in interstate commerce, as aforesaid set forth, brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts; and