

Syllabus

IN THE MATTER OF

WALTER W. THRASHER, WILLOUGHBY J. ROTHROCK,
LINTON A. THRASHER AND WAINWRIGHT CHURCHILL,
TRADING AS THOMAS ROBERTS & 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 4282. Complaint, Aug. 28, 1940—Decision, Nov. 30, 1940

Where three individuals, engaged in Pennsylvania in purchasing canned fruits and vegetables for their own account, and in reselling same to jobbers, wholesalers, retail chain stores, and other purchasers and, as thus engaged, in making many purchases of such commodities for their own account, for resale as aforesaid, from sellers in other States and pursuant to which such commodities were shipped and transported by such sellers from the respective States in which they were located across State lines either to said individuals, or, pursuant to their instructions and directions to the respective purchasers to whom such commodities had been resold by said individuals, and also in making many purchases of such commodities for their own account as above set forth from sellers located in said State of Pennsylvania by which sellers, pursuant to instructions and directions from said individuals, commodities thus purchased were shipped and transported from said State across State lines to the respective purchasers to whom such commodities had been resold by said individuals—

- (a) Received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amount, through usually purchasing commodities in question at prices lower than those at which such commodities were being sold to other purchasers thereof by an amount which reflected all or a portion of the brokerage which was currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers; and
- (b) Granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amounts, to the purchasers of such commodities bought by said individuals for their own account as above set forth, and resold to such purchasers and shipped, pursuant to such resale, to purchasers in question across State lines:

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

Mr. John Darsey, for the Commission.

Montgomery & McCracken, of Philadelphia, Pa., for respondents.

Complaint

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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 subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents Walter W. Thrasher, Willoughby J. Rothrock, Linton A. Thrasher, and Wainwright Churchill are individuals, trading as Thomas Roberts & Co., with their principal office and place of business located at 135 South Second Street, Philadelphia, Pa. Respondents are engaged in the business of purchasing canned fruits and vegetables for their own account and of reselling the same to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of Pennsylvania, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondents or, pursuant to instructions and directions from respondents, to the respective purchasers to whom such commodities have been resold by respondents.

Since June 19, 1936, respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of Pennsylvania, which sellers, pursuant to instructions and directions from respondents, have caused the commodities so purchased by respondents to be shipped and transported from the State of Pennsylvania across State lines to the respective purchasers to whom such commodities have been resold by respondents.

PAR. 2. Since June 19, 1936, in connection with the purchases of such commodities by respondents for their own account in interstate commerce as set forth in paragraph 1 hereof, respondents have received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondents by purchasing commodities at prices lower than the prices at which such commodities are sold to other purchasers thereof by an amount which reflects all or a portion of the brokerage currently being paid

by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

PAR. 3. Since June 19, 1936, respondents have resold such commodities purchased for their own account as set forth in paragraph 1 hereof to purchasers located in States other than the State of Pennsylvania, pursuant to which sales respondents have caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the resale of such commodities in interstate commerce as aforesaid, respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 4. The receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondents upon the purchases of commodities by the respondents as set forth in paragraph 2 hereof, and the granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondents to purchasers upon the resale of commodities by respondents as set forth in paragraph 3 hereof, are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

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 28th 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.

On October 8, 1940, the respondents filed their answer, admitting all the material allegations of fact set forth in said complaint, waiving all intervening procedure and further hearings as to said facts and waiving the filing of briefs and presentation of 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 named in the caption hereof, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Walter W. Thrasher, Willoughby J. Rothrock, Linton A. Thrasher, and Wainwright Churchill are individuals trading as Thomas Roberts & Co., with their principal office and place of business located at 135 South Second Street, Philadelphia, Pa. Respondents for a number of years have been engaged in the business of purchasing canned fruits and vegetables for their own account and of reselling the same to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, the respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of Pennsylvania, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to the respondents or, pursuant to instructions and directions from the respondents, to the respective purchasers to whom such commodities have been resold by the respondents.

Since June 19, 1936, the respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of Pennsylvania, which sellers, pursuant to instructions and directions from the respondents, have caused the commodities so purchased by the respondents to be shipped and transported from the State of Pennsylvania across State lines to the respective purchasers to whom such commodities have been resold by the respondents.

PAR. 2. Since June 19, 1936, in connection with the purchases of such commodities by the respondents for their own account in interstate commerce as set forth in paragraph 1 hereof, the respondents have received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage has been accomplished by respondents by purchasing commodities at prices lower than the prices at which such commodities were being sold to other purchasers thereof by an amount which reflected all or a portion of the brokerage which was currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

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Order

PAR. 3. Since June 19, 1936, the respondents have resold such commodities purchased for their own account as set forth in paragraph 1 hereof to purchasers located in States other than the State of Pennsylvania, pursuant to which sales the respondents have caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the sale of such commodities in interstate commerce as aforesaid, the respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

CONCLUSION

In receiving and accepting brokerage fees and commissions or allowances and discounts in lieu thereof from sellers upon their purchases of commodities as set forth in paragraph 2 hereof, and in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof, to purchasers upon the resale of commodities as set forth in paragraph 3 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 named in the caption hereof, in which answer said respondents admit all the material allegations of fact set forth in said complaint, and state that they 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 purchasing commodities in interstate commerce the respondents Walter W. Thrasher, Willoughby J. Rothrock, Linton A. Thrasher, and Wainwright Churchill, trading under the name Thomas Roberts & 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 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 in connection with the resale in interstate commerce of commodities purchased by respondents, the respondents Walter W. Thrasher, Willoughby J. Rothrock, Linton A. Thrasher, and Wainwright Churchill, trading under the name Thomas Roberts & Co., or any other name, their agents, employees, and representatives, do forthwith cease and desist from:

1. Granting or making any allowances or discounts in lieu of brokerage to any purchaser in such transactions by selling commodities to any of such purchasers at a price reflecting a reduction from the prices at which sales of such commodities are currently being effected by respondents to other customers of an amount representing, in whole or in part, brokerage currently being paid by respondents to local brokers for brokerage services rendered to respondents in effecting sales of such commodities to other purchasers thereof; and

2. Granting or allowing 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 to any purchaser in such transactions.

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

CHARLES F. UNRUH AND ROBERT A. HARRIS, JR.,
TRADING AS C. F. UNRUH BROKERAGE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 13, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4283. Complaint, Aug. 29, 1940—Decision, Nov. 30, 1940

Where two individuals engaged in Virginia, 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 in effecting, in some instances as thus engaged, sales of such commodities for sellers through corresponding or local brokers employed by them to assist them in making such sales, and in other instances in effecting sales of such commodities for sellers to purchasers directly, and pursuant to which sales, whether effected by said individuals through aid of such corresponding or local brokers, or directly, commodities thus sold were shipped and transported by sellers thereof across State lines to respective purchasers, and as thus engaged, in compensating such corresponding or local brokers in former cases through payments to such brokers of certain percentage, usually 50 percent of the brokerage fee or commission paid by sellers to them for services in connection with such sales and usually amounting to 4 percent of the purchase price paid by the purchaser for such commodities—

- (a) Granted and allowed, in connection with the sales of such commodities in interstate commerce effected by them for sellers to purchasers directly, brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amounts, to such purchasers and amounting, usually, to 50 percent of the brokerage fee or commission paid by the sellers to them for services in connection with such sales, or allowance or discount in lieu thereof:

Held, That 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, said individuals violated provisions of Section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act; and

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