

IN THE MATTER OF
W. E. ROBINSON & COMPANY, INC.

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 4294. Complaint, Aug. 30, 1940—Decision, Jan. 10, 1941

Where a corporation engaged in Maryland as field broker in acting as agent 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 it to assist it 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 it 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 it 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 it 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 brokers' fee or commission paid by the sellers to it 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 or commodities from sellers as above set forth, said corporation violated provision of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act; and

Where said corporation engaged in business of purchasing canned fruit and vegetables for its 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 corporation or pursuant to instructions and directions from it, to the respective purchasers to whom such commodities had been resold by said corporation, and in also making many purchases of such commodities for its own account as aforesaid from sellers located in State of Maryland, by which sellers, pursuant to instructions and directions from said corporation, commodities thus purchased were caused to be shipped and transported from said State across State lines to the respective purchasers to whom said commodities had been resold by it;

- (b) Received and accepted from sellers brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts in connection with the purchases of such commodities by said corporation for its own account in interstate commerce as above set forth; and
- (c) 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 corporation for its own account and resold as aforesaid to purchasers located in other States and pursuant to which sales it caused such commodities to be shipped and transported across State lines to such purchasers:

Held, That in receiving and accepting brokerage fees and commissions, or allowances and discounts in lieu thereof, from sellers upon its 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 corporation violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. John Darsey for the Commission.

Mr. Ernest Volkart, of Baltimore, Md., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the 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, 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. Respondent W. E. Robinson & Co., Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located in Bel Air, Md. Respondent is engaged in the business of field broker, acting as agent 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.

In some instances sales of such commodities are effected for sellers by respondent through brokers, commonly known as corresponding or local brokers, who are employed by respondent to assist them in making such sales. In other instances sales of such commodities are effected for sellers by respondent to purchasers directly.

PAR. 2. For services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondent receives from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

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In the instances where sales of such commodities are effected for sellers by respondent through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to respondent for services in connection with such sales is granted and allowed by respondent to such corresponding or local brokers for brokerage services rendered to respondent in connection with such sales.

In the instances where sales of such commodities are effected for sellers by respondent to purchasers directly, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by the sellers to respondent for services in connection with such sales, or an allowance or discount in lieu thereof, is granted and allowed by respondent to such purchasers.

PAR. 3. In the course and conduct of its said business since June 19, 1936, respondent has effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by respondent to purchasers directly as set forth in paragraph 2 hereof, respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondent is also engaged in the business of purchasing canned fruits and vegetables for its own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, respondent has made many purchases of such commodities for its own account for resale as aforesaid from sellers located in States other than the State of Maryland 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 respondent or, pursuant to instructions and directions from respondent, to the respective purchasers to whom such commodities have been resold by respondent.

Since June 19, 1936, respondent has also made many purchases of such commodities for its own account as aforesaid from sellers located in the State of Maryland, which sellers, pursuant to instructions and directions from respondent, have caused the commodities so purchased by respondent to be shipped and transported from the State of Mary-

land across State lines to the respective purchasers to whom such commodities have been resold by respondent.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by respondent for its own account in interstate commerce as set forth in paragraph 5 hereof, respondent has received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, respondent has resold such commodities purchased for its own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Maryland, pursuant to which sales respondent has 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, respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 8. The granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondent to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; the receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondent upon the purchases of commodities by the respondent as set forth in paragraph 6 hereof; and the granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondent to purchasers upon the resale of commodities by respondent as set forth in paragraph 7 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 30th day of August 1940, issued and served its complaint in this proceeding upon the respondent named in the caption hereof, charging it 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

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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, waiving all intervening procedure and further hearings as to said facts and waiving the filing of briefs and presentation of oral argument, which substitute answer was duly filed in the office of the Commission. 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 respondent 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. Respondent, W. E. Robinson & Co., Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located in Bel Air, Md. Respondent is engaged in the business of field broker, acting as agent 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.

In some instances sales of such commodities have been effected for sellers by the respondent through brokers, commonly known as corresponding or local brokers, who have been employed by the respondent to assist it in making such sales. In other instances sales of such commodities have been effected for sellers by respondent to purchasers directly.

PAR. 2. For the services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondent has received from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities have been effected for sellers by the respondent through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to the respondent for services in connection with such sales has been granted and allowed by the respondent to such corresponding or local brokers for brokerage services rendered to the respondent in connection with such sales.

In the instances where sales of such commodities have been effected for sellers by respondent to purchasers directly, a certain percentage,

usually 50 percent, of the brokerage fee or commission paid by the sellers to the respondent for services in connection with such sales, or an allowance or discount in lieu thereof, has been granted and allowed by the respondent to such direct purchasers.

PAR. 3. In the course and conduct of its said business since June 19, 1936, the respondent has effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by the respondent to purchasers directly as set forth in paragraph 2 hereof, the respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondent for a number of years has also been engaged in the business of purchasing canned fruits and vegetables for its own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, the respondent has made many purchases of such commodities for its own account for resale as aforesaid from sellers located in States other than the State of Maryland, 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 respondent or, pursuant to instructions and directions from respondent, to the respective purchasers to whom such commodities have been resold by the respondent.

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

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by the respondent for its own account in interstate commerce as set forth in paragraph 5 hereof, the respondent has received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, the respondent has resold such commodities purchased for its own account as set forth in paragraph 5

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hereof to purchasers located in States other than the State of Maryland, pursuant to which sales the respondent has 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 respondent has 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 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 set forth in paragraph 4 hereof; 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 6 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 7 hereof, the respondent has 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 respondent named in the caption hereof, in which answer said respondent admits all the material allegations of fact set forth in said complaint, and states that it waives 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 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 connection with sales of commodities in interstate commerce effected for sellers by respondent in the capacity of field broker, and in connection with the resale in interstate commerce of commodities purchased by respondent, the respondent, W. E. Robinson & Co., Inc., its agents, employees, and representatives, 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 com-

modities 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 respondent to other customers of an amount representing, in whole or in part, brokerage currently being paid by respondent to corresponding or local brokers for brokerage services or sales assistance rendered to respondent 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 in purchasing commodities in interstate commerce the respondent, W. E. Robinson & Co., Inc., its agents, employees, and representatives, forthwith cease and desist from:

1. Making purchases of commodities for respondent's 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 respondent's own account.

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

IN THE MATTER OF

HARRY A. GREENBERG, TRADING AS PIONEER SPECIALTY COMPANY, AND THE CANDYLAND COMPANY

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

Docket 4381. Complaint, Nov. 20, 1940—Decision, Jan. 10, 1941

Where an individual engaged in sale and distribution of candy and confectionery products including certain assortments of candy and other articles of merchandise which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof, and which included (1) as illustrative, assortment consisting of 150 pieces of penny candy of uniform size and shape, together with souvenir pen and 18 larger pieces of candy, for sale and distribution to purchasers under a plan by which those securing by chance from such uniform pieces one of the 18 chocolate creams included therein, received, in addition, one of said 18 larger pieces, and purchaser of last of said penny pieces in assortment was entitled to and received without additional cost said souvenir pen; and (2) various other assortments of candy and other articles of merchandise involving lot or chance feature and similar to that above described from which they varied in detail only;

- (a) Sold said assortments to wholesalers, jobbers, and retailers, by whom as direct or indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with aforesaid sales plan involving game of chance or sale of a chance to procure an article of merchandise at a price which was much less than the normal retail price thereof, or additional pieces of candy without additional cost, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his products, in accordance with sales plan above described, contrary to an established public policy of the United States Government and in violation of criminal laws and in competition with many who are unwilling to adopt and use said or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his candy and other articles of merchandise and element of chance involved therein, and were thereby induced to buy and sell his said products in preference to those offered and sold by his said competitors who do not use same or equivalent methods, and with effect, through use of said method by him and because of said game of chance, of diverting trade unfairly in commerce to him from his competitors aforesaid who do not use same or equivalent methods; to the substantial injury of competition in commerce; and

- (b) Represented through use of word "factory" on his letterheads and by other means that he owned or operated a factory where his products were made and that he was the manufacturer thereof, facts being he purchased