

Complaint

IN THE MATTER OF

RAMSDELL PACKING 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 4355. Complaint, Oct. 24, 1940—Decision, Apr. 15, 1941

Where a corporation engaged in packing, processing and canning sardines at its Maine plants, and in interstate sale and distribution thereof, (1) in some instances through brokers employed as its selling agents to whom it paid a brokerage fee or commission usually amounting to 5 percent of the invoice price on sales, and (2) in other instances directly to purchasers, including some of its brokers buying for their own account—

- (a) Granted and allowed brokerage fees and commissions, and allowances and discounts in lieu thereof, in substantial amounts to certain of its customers, through selling its said product direct to some customers at a price reflecting a reduction from that at which it was currently selling such sardines to other customers in an amount equivalent to brokerage currently being paid by it to its brokers for sales to such other customers; and
- (b) Granted and allowed brokerage fees and commissions, and allowances and discounts in lieu thereof, in substantial amounts to certain customers, through selling to customers, sales to whom were effected through brokers to whom it did not pay, customarily, full brokerage, at a price reflecting a reduction from the prices at which it was currently selling its product to other customers in an amount approximately equal to the difference between such full brokerage and that actually paid:

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 sardines from it, as above set forth, said corporation violated subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent, named in the caption hereof, and hereinafter more particularly 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), issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Ramsdell Packing Co., is a corporation organized and existing under and by virtue of the laws of the State

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of Maine, and has its principal office and place of business located at Rockland, Maine.

PAR. 2. The respondent is engaged in the business of selling sardines, which it has packed, processed and canned at two canning plants which it operates in the State of Maine, one at Rockland and the other at Portland.

In some instances sales of such sardines are effected through brokers who are employed by respondent as its selling agents. In other instances such sardines are sold by respondent directly to purchasers, among which class of purchasers are some of respondent's brokers who on occasions purchase sardines for their own account for resale. When sales of sardines are effected through brokers, respondents pays to such brokers a brokerage fee or commission which usually amounts to 5 percent of the price at which respondent invoices such sardines to the purchasers thereof.

PAR. 3. In the course and conduct of its said business since June 19, 1936, respondent has sold and distributed sardines in commerce between and among the various States of the United States and the District of Columbia, in each of the manners set forth in paragraph 2 hereof, and as a result of such sales, has caused sardines to be shipped and transported from its said canning plants in the State of Maine across State lines to the respective purchasers thereof, and there has been at all times mentioned herein a continuous current of trade and commerce in sardines across State lines between respondent's canning plants and the purchasers of such sardines.

PAR. 4. Since June 19, 1936, in connection with sales of sardines in commerce as above alleged and described, respondent has granted and allowed brokerage fees and commissions and allowances and discounts in lieu thereof in substantial amounts to certain of its customers.

Among the methods employed by respondent in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to such customers are the following:

1. To some of its customers, the sales to whom are effected directly by respondent, respondent grants an allowance or discount in lieu of brokerage by selling sardines to such customers at a price reflecting a reduction from the prices at which respondent is currently selling such sardines to other customers of an amount representing brokerage currently being paid by respondent to its brokers for effecting sales of sardines to other purchasers thereof.

2. To other of its customers, the sales to whom are effected through brokers to whom respondent does not pay the full brokerage customarily and usually paid by respondent to its brokers for effecting

sales of sardines, the respondent grants an allowance or discount in lieu of brokerage, by selling sardines to such customers at a price reflecting a reduction from the prices at which respondent is currently selling sardines to other customers of brokerage in an amount representing and approximately equal to the difference between the full brokerage customarily paid by respondent to its brokers for effecting such sales and the amount of brokerage actually paid by respondent to its brokers for effecting said sales.

PAR. 5. The aforesaid acts of the respondent constitute a violation of the provisions of subsection (c) of section 2 of the above-mentioned Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

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 the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), the Federal Trade Commission on October 24, 1940, issued and served its complaint in this proceeding upon the party respondent named in the caption hereof, charging said respondent with violating the provisions of subsection (c) of section 2 of said act, as amended.

After the issuance of said complaint, the respondent filed its 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.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and answer, and the Commission, having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ramsdell Packing Co., is a corporation organized and existing under and by virtue of the laws of the State of Maine, and has its principal office and place of business located at Rockland, Maine.

PAR. 2. The respondent is engaged in the business of selling sardines, which it has packed, processed, and canned at two canning

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plants which it operates in the State of Maine, one at Rockland and the other at Portland.

In some instances sales of such sardines are effected through brokers who are employed by respondent as its selling agents. In other instances such sardines are sold by respondent directly to purchasers, among which class of purchasers are some of respondent's brokers who on occasions purchase sardines for their own account for resale. When sales of sardines are effected through brokers, respondent pays to such brokers a brokerage fee or commission which usually amounts to 5 percent of the price at which respondent invoices such sardines to the purchasers thereof.

PAR. 3. In the course and conduct of its said business since June 19, 1936, respondent has sold and distributed sardines in commerce between and among the various States of the United States and the District of Columbia, in each of the manners set forth in paragraph 2 hereof, and as a result of such sales, has caused sardines to be shipped and transported from its said canning plants in the State of Maine across State lines to the respective purchasers thereof, and there has been at all times mentioned herein a continuous current of trade and commerce in sardines across State lines between respondent's canning plants and the purchasers of such sardines.

PAR. 4. In the course and conduct of its business as aforesaid the respondent, Ramsdell Packing Co., a corporation, since June 19, 1936, has granted and allowed brokerage fees and commissions and allowances and discounts in lieu thereof in substantial amounts to certain of its customers. Among the methods employed by respondent in granting and allowing brokerage fees and commissions and allowances and discounts in lieu thereof to such customers are the following:

1. To some customers, the sales to whom are effected directly by respondent, respondent sells sardines at a price reflecting a reduction from the price at which respondent is currently selling such sardines to other customers in an amount equivalent to brokerage currently being paid by respondent to its brokers for effecting sales of sardines to such other customers.

2. Respondent sells sardines through brokers to other customers, and on some of such sales respondent does not pay the full brokerage customarily and usually paid by respondent for effecting such sales of sardines, and on such sales the respondent grants to such customers a price reflecting a reduction from the prices at which respondent is currently selling sardines to other customers in an amount equivalent to brokerage and approximately equal to the difference between the full brokerage customarily paid by respondent to its brokers for effect-

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ing such sales and the amount of brokerage actually paid by respondent to its brokers for effecting said sales.

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 sardines from respondent, as set forth in paragraph 4 hereof, the respondent, Ramsdell Packing Co., a corporation, has violated and is violating subsection (c) of section 2 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 duly filed by respondent Ramsdell Packing Co., a corporation, which answer admits all of the material allegations of the complaint to be true and waives the taking of further evidence and all other intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion herein that said respondent, Ramsdell Packing Co., a corporation, has violated the provisions of "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 respondent, Ramsdell Packing Co., a corporation, its officers, representatives, agents, and employees, in connection with the sale and distribution of sardines, in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

1. Selling sardines to customers, the sales to whom are effected directly by respondent, at a price reflecting a reduction from the prices at which respondent is currently selling such sardines to other customers in an amount equivalent to brokerage currently being paid by respondent to its brokers for effecting sales of sardines to other purchasers thereof.

2. Selling sardines to customers, the sales to whom are effected through brokers to whom respondent does not pay the full brokerage customarily and usually paid by respondent to its brokers for effecting sales of sardines, at a price reflecting a reduction from the prices at which respondent is currently selling sardines to other customers in an amount equivalent to brokerage and approximately equal to

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the difference between the full brokerage customarily paid by respondent to its brokers for effecting such sales and the amount of brokerage actually paid by respondent to its brokers for effecting said sales.

3. From continuing or resuming the practices forbidden in paragraphs 1 and 2 hereof, or by any other means paying or granting, directly or indirectly, to buyers on their own purchases of sardines any commission, brokerage, or other compensation, or any allowance or discount in lieu thereof.

It is further ordered, That the said respondent, Ramsdell Packing Co., a corporation, within 60 days after service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying, and has complied, with the order to cease and desist hereinabove set forth.

MEMORANDUM

The Commission, as of the same date, made findings and orders likewise involving violation of the provisions of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, in connection with the sale and distribution in interstate commerce of sardines packed, processed, and canned by the respective respondents, in twelve other cases.

In one of these, namely, the case of Union Sardine Co., Docket 4413, reported in full, *infra*, at p. 1194, there was a variance from the facts in the Ramsdell case above, in that, as there found, there was involved only the first of the two discriminatory practices set forth in the principal case.

Complaints, findings, and orders in the other 11 cases (in which complaints issued on October 24, 1940, in Dockets 4356 to 4362, and on Dec. 13, 1940, in Dockets 4410-4412 and 4414), were similar to those in the principal case above reported in full, the respondents and docket numbers, along with their principal place of business, and the canning plants operated by them, being as follows:

SEABOARD PACKING Co., Docket 4356, Lubec, Maine, with plants at Lubec, Portland, and Robbinston, Maine.

MACHIASPORT CANNING Co., Docket 4357, Machiasport, Maine, with plants at Machiasport, and Eastport, Maine.

HOLMES PACKING CORPORATION, Docket 4358, Eastport, Maine, with plant in Eastport, Maine.

R. J. PEACOCK CANNING Co., Docket 4359, Lubec, Maine, with plants at Lubec, Portland and Eastport, Maine.

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JONESPORT PACKING Co., Docket 4360, West Jonesport, Maine, with plant at West Jonesport, Maine.

SUNSET PACKING Co., INC., Docket 4361, West Pembroke, Maine, with plant at West Pembroke, Maine.

STINSON CANNING Co., etc., Docket 4362, Prospect Harbor, Maine, with plants at Prospect Harbor and South West Harbor, Maine.

ROYAL RIVER PACKING CORPORATION, Docket 4410, Yarmouth, Maine, with plant at Yarmouth, Maine.

BELFAST PACKING Co., Docket 4411, Belfast, Maine, with plant at Belfast, Maine.

NORTH LUBEC MANUFACTURING AND CANNING Co., Docket 4412, North Lubec, Maine, with plant at North Lubec, Maine.

BOOTH FISHERIES CORPORATION, Docket 4414, Chicago, Ill., operating through its wholly-owned subsidiary, BOOTH FISHERIES SARDINE Co., Lubec, Maine, with plant at Lubec, Maine.

The Commission was represented in the foregoing 11 cases by *Mr. Edward S. Ragsdale*.

Booth Fisheries Corporation was represented by *Levinson, Becker, Peebles & Swiren*, of Chicago, Ill. .

IN THE MATTER OF
UNION SARDINE 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 4413. Complaint, Dec. 13, 1940—Decision, Apr. 15, 1941

Where a corporation engaged in packing, processing, and canning sardines at its Maine plant, and in interstate sale and distribution thereof, (1) in some instances through brokers employed as its selling agents to whom it paid a brokerage fee or commission usually amounting to 5 percent of the invoice price on sales, and (2) in other instances directly to purchasers, including some of its brokers buying for their own account—

Granted and allowed brokerage fees and commissions, and allowances and discounts in lieu thereof, in substantial amounts to certain of its customers, through selling its said product direct to some customers at a price reflecting a reduction from that at which it was currently selling such sardines to other customers in an amount equivalent to brokerage currently being paid by it to its brokers for sales to such other customers:

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 sardines from it, as above set forth, said corporation violated subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly 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), issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Union Sardine Co., is a corporation organized and existing under and by virtue of the laws of the State of Maine, and has its principal office and place of business located at Lubec, Maine.

PAR. 2. The respondent is engaged in the business of selling sardines which it has packed, processed, and canned at its canning plant which it operates in the city of Lubec, State of Maine.

In some instances sales of such sardines are affected through brokers who are employed by respondent as its selling agents. In other