

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

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 plant 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

Findings

32 F. T. C.

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 the 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 December 13, 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 certain material allegations of fact set forth in said complaint and denying others, and waiving all intervening procedure as to said facts, and expressly waiving the filing of briefs and oral argument.

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, 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 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.

1194

Order

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 plant 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 plant and the purchasers of such sardines.

PAR. 4. In the course and conduct of its business as aforesaid the respondent, Union Sardine Co., a corporation, since June 19, 1936, has granted allowances and discounts in lieu of brokerage fees and commission in substantial amounts to certain of its customers by selling sardines to some customers at a price reflecting a reduction from the price at which respondent is currently selling sardines of like grade and quality 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.

CONCLUSION

In granting and allowing brokerage fees and commission, 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, Union Sardine 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 Union Sardine 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 as to said facts and expressly waives the filing of briefs and oral argument, and the Commission having made its findings as

Order

32 F. T. C.

to the facts and conclusion herein that said respondent, Union Sardine 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, Union Sardine 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. From continuing or resuming the practices forbidden in paragraph 1 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, Union Sardine 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.

Syllabus

IN THE MATTER OF
FRANK L. SINGER, TRADING AND DOING BUSINESS AS
FRANK L. SINGER FUR COMPANY

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

Docket 4189. Complaint, July 16, 1940—Decision, Apr. 16, 1941

Where an individual dealer engaged in interstate purchase and sale of raw furs, by means of price lists similar in form to those of his principal competitors, and by circulars, folders, and booklets disseminated among trappers and dealers in the various States, in which were set forth his method of purchasing raw furs, the quality, grading classification of furs and the high prices and average prices paid therefor, all prices to be subject to market changes and buyer's classification—

- (a) Represented that he would purchase the average or ordinary grade of furs at the prices offered for the highest quality or grade thereof, by emphasizing the highest price in the upper grades through such statements as "The Golden Rules has been my rule in buying furs all my life. It will be my rule in dealing with you," and "Beaver \$33.00-\$30.00 for extra large No. 1 down to \$12.00-\$7.00 for small No. 1," and others of similar tenor, with varying prices for other furs, including mink, skunk, raccoon, and muskrat; when in fact specimens of a character to be graded in the higher ranges of the top grades are rare, bulk of furs offered being of medium or low average, and said dealer had no intention of paying any higher sum than strict grading would require, but expected to pay trappers and dealers prices approximating those in the lower medium grades indicated in his said advertising matter;

Whereby trappers not skilled in fur grading technique were induced to ship to him, believing mistakenly that they would receive payment at highest prices quoted, but in fact received from him, frequently, prices substantially less than they might have obtained elsewhere; and

- (b) Made misleading statements and representations therein relating to market conditions and the demand for certain grades and types of furs which he desired to purchase;

With effect of misleading and deceiving trappers and dealers in furs into the erroneous belief that aforesaid misrepresentations were true, and with result, because of such mistaken belief, that many trappers and dealers in furs, thereby depriving themselves of trading with other outlets, were induced to ship and sell to him substantial quantities of furs:

Held, That such acts and practices under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. B. C. Wilson for the Commission.

Wise, Corlett & Canfield, of New York City, for respondent.