

Complaint

IN THE MATTER OF

GEORGE C. BOUNDS AND WILLIAM H. PHILLIPS, DOING
BUSINESS AS GEORGE A. BOUNDS & 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 4303. Complaint, Sept. 5, 1940—Decision, June 13, 1941

Where two partners engaged in packing, processing, and canning tomatoes and sweetpotatoes, and in interstate sale and distribution thereof (1) through brokers to whom they usually granted brokerage amounting to 4 percent from their invoice or prevailing market price, and (2) directly to purchasers for resale—

- (a) Granted to purchasers, the sales to whom were effected by brokers who did not accept brokerage from said partners on such sales, discounts, and allowances in lieu of brokerage, by selling and invoicing said commodities at a net price which was lower than their prevailing market price by an amount approximately equal to the customary brokerage usually granted and allowed by them and accepted by their brokers on similar sales to purchasers;
- (b) Granted to purchasers, sales to whom were effected by brokers controlled by such purchasers, discounts and allowances in lieu of brokerage, by selling said commodities to them at a net price which was lower than their prevailing market price by an amount equal to the customary brokerage usually granted and allowed by them to such brokers on similar sales to other purchasers; and
- (c) Granted to brokers on sales for such brokers' own account, discounts and allowances in lieu of brokerage, by selling to such brokers at a net price which was lower than their prevailing market price by an amount equal to the customary brokerage usually granted and allowed by them to such brokers on similar sales to other purchasers:

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

Mr. John T. Haslett for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly 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,

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1936 (U. S. C. title 15, sec. 13), issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents, George C. Bounds and William H. Phillips, partners doing business under the name and style of George A. Bounds & Co., have their principal office and place of business located at Salisbury, Md. Respondents own, and for the purpose of packing, processing, and canning tomatoes and sweetpotatoes, operate a factory located at Hebron, Md.

PAR. 2. Respondents since June 19, 1936, have been and are now engaged in the business of selling, shipping, and distributing such commodities, by means and through the use of brokers, directly to purchasers of the same for resale. The customary brokerage granted and allowed by respondents to brokers on such sales has been and usually is 4 percent from invoice price, said invoice price being respondents' prevailing market price.

PAR. 3. Respondents are now and have been since June 19, 1936, selling, shipping, and distributing such commodities in commerce between and among the various States of the United States and the District of Columbia, and as a result of such sales have caused such commodities to be shipped and transported from the State of Maryland to the purchasers thereof located in the various States of the United States other than the State of Maryland. There is now and has been at all times mentioned herein a continuous current of trade in commerce in such commodities between respondents and the purchasers of such commodities.

PAR. 4. In the course and conduct of their business in commerce as hereinbefore alleged and described.

1. Respondents have granted to purchasers, the sales to whom have been effected by brokers not accepting brokerage from respondents on such sales, discounts, and allowances in lieu of brokerage, by selling and invoicing said commodities to such purchasers at a net price which is lower than respondents' prevailing market price by an amount which approximately equals the customary brokerage usually granted and allowed by respondents and accepted by respondent's brokers on similar sales to purchasers.

2. Respondents have granted to purchasers, the sales to whom have been effected by brokers controlled by such purchasers, discounts and allowances in lieu of or as brokerage, by selling said commodities to such purchasers at a net price which is lower than respondents prevailing market price by an amount which equals the customary brokerage usually granted and allowed by respondents to such brokers on similar sales to other purchasers effected by such brokers.

3. Respondents have granted to brokers, the sales to whom have been for such brokers own account, discounts and allowances in lieu of or as brokerage, by selling said commodities to such brokers at a net price which is lower than respondents prevailing market price by an amount which is equal to the customary brokerage usually granted and allowed by respondents to such brokers on similar sales to other purchasers when effected by such brokers.

PAR. 5. The aforesaid acts of the respondents 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 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 5th day of September, 1940, issued and thereafter served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging the respondents with violation of the provisions of subsection (c) of section 2 of said act, as amended.

After the issuance of said complaint, the respondents filed their answer admitting all the material allegations of fact set forth in said complaint 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 matter 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. Respondents, George C. Bounds and William H. Phillips, partners doing business under the name and style of George A. Bounds & Co., have their principal office and place of business located at Salisbury, Md. Respondents own, and for the purpose of packing, processing, and canning tomatoes and sweetpotatoes, operate a factory located at Hebron, Md.

PAR. 2. Respondents since June 19, 1936, have been and are now engaged in the business of selling, shipping, and distributing such commodities, through the use of brokers and directly to purchasers of the same for resale. The customary brokerage granted and allowed

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by respondents to brokers on such sales has been and usually is 4 percent from the invoice price, said invoice price being respondents' prevailing market price.

PAR. 3. Respondents are now and have been since June 19, 1936, selling, shipping, and distributing such commodities in commerce between and among the various States of the United States and the District of Columbia, and as a result of such sales have caused such commodities to be shipped and transported from the State of Maryland to the purchasers thereof located in the various States of the United States other than the State of Maryland. There is now and has been at all times mentioned herein a continuous current of trade in commerce in such commodities between respondents and the purchasers of such commodities.

PAR. 4. In the course and conduct of their business in commerce as hereinbefore described,

1. Respondents have granted to purchasers, the sales to whom have been effected by brokers not accepting brokerage from respondents on such sales, discounts, and allowances in lieu of brokerage, by selling and invoicing said commodities to such purchasers at a net price which is lower than respondents' prevailing market price by an amount which approximately equals the customary brokerage usually granted and allowed by respondents and accepted by respondents' brokers on similar sales to purchasers.

2. Respondents have granted to purchasers, the sales to whom have been effected by brokers controlled by such purchasers, discounts and allowances in lieu of brokerage, by selling said commodities to such purchasers at a net price which is lower than respondents' prevailing market price by an amount which equals the customary brokerage usually granted and allowed by respondents to such brokers on similar sales to other purchasers effected by such brokers.

3. Respondents have granted to brokers, the sales to whom have been for such brokers' own account, discounts and allowances in lieu of brokerage, by selling said commodities to such brokers at a net price which is lower than respondents' prevailing market price by an amount which is equal to the customary brokerage usually granted and allowed by respondents to such brokers on similar sales to other purchasers when effected by such brokers.

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 canned tomatoes and canned sweetpotatoes from the respondents, as set forth in paragraph 4 hereof, the

respondents, George C. Bounds and William H. Phillips, partners doing business under the name and style of George A. Bounds & Co., have violated and are 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 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 to be true, and state that they waive all intervening procedure and further hearing as to said facts, and expressly waive the filing of briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that said 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 the respondents, George C. Bounds and William H. Phillips, partners doing business under the name and style of George A. Bounds & Co., their representatives, agents, and employees, in connection with the sale and distribution of canned tomatoes and canned sweetpotatoes in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

1. Granting or making any allowances or discounts in lieu of brokerage to any purchaser by selling commodities 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 brokers for brokerage services rendered to respondents in effecting sales of such commodities to such 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.

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IN THE MATTER OF

GLAND ESTEMETER CORPORATION, AND WILLIAM
ESTEPCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4328. Complaint, Oct. 3, 1940—Decision, June 13, 1941*

Where a corporation and its president and general manager, who formulated, directed, and controlled its practices and policies, engaged in interstate sale and distribution of their "Gland Estemeter" device for diagnosing various ailments and conditions; by means of advertisements disseminated through the mails, circulars, leaflets, and other advertising literature—

Represented, directly or by implication, that all ailments and diseases of the human body are caused by improper or abnormal functioning of the glands, and that their said device detected and disclosed any such improper or abnormal functioning, revealed any vitamin deficiency in the body and whether condition thereof was acid or alkaline, disclosed the condition of the blood with respect to energy and activity, and analyzed and disclosed any impairment of the mental processes;

Facts being there are many ailments and diseases which are not caused by any improper or abnormal functioning of the glands, and even where there might be such dysfunctioning, their said device was wholly incapable of detecting or disclosing such condition; and it possessed no value whatsoever in the diagnosis of any ailment, disease, or condition of the body;

With tendency and capacity to induce a substantial portion of the purchasing public to believe that such representations were true, and to cause it to purchase substantial quantities of their product as a result of such erroneous and mistaken belief:

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

Mr. Randolph W. Branch for the Commission.

Darrow, Smith & Carlin, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Gland Estemeter Corporation, a corporation, and William Estep, an individual, herein-after referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gland Estemeter Corporation is a corporation organized under the laws of the State of Missouri. Respondent William Estep is president and general manager of the corporate