

Complaint

33 F. T. C.

IN THE MATTER OF
GIANT TIGER CORPORATION

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 4276. Complaint, Aug. 28, 1940—Decision, July 31, 1941

Where a corporation engaged in operating a chain of self-service retail food stores, commonly known as "SUPER MARKETS," purchasing a substantial portion of its requirements from sellers in other States—

Received and accepted allowances and discounts in lieu of brokerage in substantial amounts, through purchasing commodities at prices lower than those at which such commodities were sold to other purchasers by an amount which reflected all or a portion of the brokerage currently being paid by the sellers to their respective brokers for effecting sales thereof to other purchasers:

Held, That such receipts and acceptance of allowances and discounts in lieu of brokerage fees or commissions from sellers upon purchases of commodities violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John T. Haslett for the Commission.

Einhorn & Schachtel, of Philadelphia, Pa., 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 Giant Tiger Corporation is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at Forty-first and Chestnut Streets, Philadelphia, Pa. Respondent is engaged in the business of operating a chain of self-service retail food stores, commonly known as "SUPER MARKETS."

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchased commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with a purchase of its requirements in interstate commerce, as aforesaid, respondent has received and accepted allowances and discounts in lieu of brokerage in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondent 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. 4. The receipt and acceptance of allowances and discounts in lieu of brokerage by respondent as set forth in paragraph 3 hereof is 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 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 thereafter served its complaint in this proceeding upon respondent Giant Tiger Corporation, a corporation, charging it with violation of the provisions of subsection (c) of section 2 of said act.

After the issuance and service of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts and expressly waiving the filing of briefs and oral argument, which substitute answer was duly filed in the office of the Commission.

Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and substitute 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. Respondent Giant Tiger Corporation is a corporation organized and existing under the laws of the State of Pennsylvania.

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nia, with its principal office and place of business located at Forty-first and Chestnut Streets, Philadelphia, Pa. Respondent is engaged in the business of operating a chain of self-service retail food stores, commonly known as "SUPER MARKETS."

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchased commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with the purchase of its requirements in interstate commerce, as aforesaid, respondent has received and accepted allowances and discounts in lieu of brokerage in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondent 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.

CONCLUSION

In receiving and accepting allowances and discounts in lieu of brokerage fees or commissions from sellers upon purchases of commodities as set forth in paragraph 3 hereof, the 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).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and substitute answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearings as to said facts and expressly waives the filing of briefs and oral argument and the Commission having made its findings as to the facts and 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 the respondent Giant Tiger Corporation, a corporation, its officers, directors, agents, employees, and representatives,

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jointly or severally, directly or through any corporate or other device, in connection with the purchasing of commodities in interstate commerce, do forthwith cease and desist from:

1. Accepting from sellers, directly or indirectly, any allowance or discount in lieu of brokerage fees or commissions in whatever manner or form said allowances, discounts, brokerage fees, or commissions may be offered, allowed, granted, paid, or transmitted; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage fee or other compensation or any allowance or discount in lieu thereof upon purchases of commodities made by respondent.

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

IN THE MATTER OF
INTER-STATE CIGARETTE MERCHANDISERS ASSOCIATION ET AL.

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

Docket 4388. Complaint, Nov. 26, 1940—Decision, July 31, 1941

Where an unincorporated trade association, together with its membership of five associations of operators of automatic cigarette vending machines, engaged in such business in the metropolitan area of New York City, and in New Jersey, New York, Pennsylvania, Connecticut, and Massachusetts, who purchased such machines from manufacturers and distributors and installed them in various types of retail establishments, such as restaurants, taverns, gasoline stations, etc., by agreement with proprietors thereof; controlling between 85 and 90 percent of the business in the territory concerned and enabled, through their aforesaid associations, more effectively to influence such trade for the enhancement of their own profits, and in active and substantial competition with each other and with others except as below set forth; and with the officers, directors, and members of said organizations—

Acting in concert to monopolize business in their respective territories, by means of (1) campaigns designed to force all operators controlling an appreciable number of locations, to join the associations, (2) demands that manufacturers refuse to sell machines to nonmembers, (3) appointment of committees to induce manufacturers to stop selling direct to "locations" and to promise not to create new operators or to sell nonmembers, or to induce nonmembers to join the association, (4) association agreements to purchase from the four leading manufacturers a specified number of machines annually in consideration of manufacturers' agreement not to create new operators or sell nonmembers, (5) threatening with boycott and, in many instances, boycotting, machines of noncooperating manufacturers, and (6) use of the combined power of all the associations in various ways to intimidate and coerce manufacturers as aforesaid—

Entered into and carried out understandings, agreements, and conspiracies between and among themselves for the purpose of restraining and eliminating competition in the purchase, distribution, and installation of automatic cigarette vending machines in interstate commerce; and, in pursuance thereof—

- (a) Established and attempted to establish the members of said associations as a preferred class for the purpose of having manufacturers and distributors confine the sale and distribution of automatic cigarette machines to such member operators exclusively;
- (b) Interfered with efforts of competitors of said member operators to obtain such machines;
- (c) Required, induced, and compelled manufacturers and distributors, by promises and threats, not to sell or ship machines to competitors of said member operators, and to confine the sale and distribution thereof to said member operators; and
- (d) Threatened to and did boycott manufacturers and distributors selling machines to competitors of said member operators;