

Complaint

33 F. T. C.

IN THE MATTER OF
UCO FOOD 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 4277. Complaint, Aug. 28, 1940—Decision, Aug. 7, 1941

Where a corporation engaged in the purchase, sale, and distribution of food products at wholesale—

Received and accepted allowances and discounts in lieu of brokerage in substantial amounts in connection with the purchase of its requirements in interstate commerce, through, usually, purchasing commodities at prices lower than those at which they were sold to other purchasers by an amount which reflected 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:

Held, That such acts and practices were in violation of 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, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Uco Food Corporation, is a corporation organized and existing under the laws of the State of New Jersey with its principal office and place of business located at 506-510 Frelinghuysen Avenue, Newark, N. J. Respondent is engaged in the purchase, sale, and distribution of food products at wholesale.

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 purchases 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.

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 served its complaint in this proceeding upon respondent Uco Food Corporation, a corporation, charging the respondent 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 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, now makes this its findings as to the facts and its conclusion drawn therefrom.

Order

33 F. T. C.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Uco Food Corporation, is a corporation organized and existing under the laws of the State of New Jersey with its principal office and place of business located at 850 Frelinghuysen Avenue, Newark, N. J. Respondent is engaged in the purchase, sale, and distribution of food products at wholesale.

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 purchases, 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 herein found, respondent has violated the provisions of section 2 (c) 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 act of Congress approved June 19, 1936 (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 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 conclu-

sion that said respondent has violated the provisions of section 2 (c) 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 act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C., title 15, sec. 13).

It is ordered, That the respondent, Uco Food Corporation, a corporation, its agents, employees, and representatives, in the purchase of commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Receiving or 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. Receiving or 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 by respondent.

It is further ordered, That the said respondent, Uco Food 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.

Complaint

33 F. T. C.

IN THE MATTER OF
G. KRUEGER BREWING COMPANY

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

Docket 4434. Complaint, Dec. 26, 1940—Decision, Aug. 7, 1941

Where a corporation engaged in brewing its "Ambassador Beer," and in competitive interstate sale and distribution thereof; by means of interstate newspaper advertising—

Represented, directly or by implication, that said product was composed wholly of barley malt and hops and contained no other cereals or fermentable ingredients, through use of such statements as " * * Only the choicest barley malt and hops are used in brewing this distinctively different product," when in fact said product was not an "all-malt beer," in which barley malt and hops are used exclusively, and which is well-known to the beer-drinking public and in demand by a portion thereof, but was product in brewing of which other fermentable grains or cereals were used in addition to malt and hops;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such advertisements were true, and with capacity to induce its purchase of substantial quantities thereof as a result of such belief, whereby trade was diverted unfairly by it from its competitors who truthfully advertise their products, to the injury of competition in commerce:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Guggenheimer & Untermeyer, of New York City, for respondent.

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 G. Krueger Brewing Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, G. Krueger Brewing Co., is a corporation organized, existing, and doing business under and by virtue of