

Complaint

33 F. T. C.

IN THE MATTER OF

R. C. WILLIAMS & COMPANY, INC.

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 4279. Complaint, Aug. 28, 1940—Decision, Aug. 27, 1941

Where a corporation engaged in importing and exporting food products, purchasing a substantial proportion 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 of such commodities to such other purchasers:

Held, That in so receiving and accepting allowances and discounts in lieu of brokerage, from sellers upon purchases, as above set forth, it violated section 2 (c) of the Clayton Act, as amended.

Mr. John T. Haslett for the Commission.

Mr. Jules Jacobs, of New York City, 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, R. C. Williams & Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 265 Tenth Avenue, New York, N. Y. Respondent is engaged in the business of importing and exporting food products.

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 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 28th day of August 1940 issued and thereafter served its complaint in this proceeding upon respondent, R. C. Williams & Co., Inc., a corporation, charging the respondent with violation of the provisions of subsection (c) of section 2 of the 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 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, R. C. Williams & Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 265 Tenth

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Avenue, New York, N. Y. Respondent is engaged in the business of importing and exporting food products.

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 set forth in paragraph 3 hereof, the respondent has violated the provisions of subsection (c) of section 2 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).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, in which answer respondent admits all 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 subsection (c) of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monop-

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lies, 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).

It is ordered, That in the course of commerce, as commerce is defined in the aforesaid Clayton Act, the respondent, R. C. Williams & Co., Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. Receiving or accepting, 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.

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 made by respondent.

It is further ordered, That the said respondent 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 this order.

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IN THE MATTER OF
CONTINENTAL BRIAR PIPE COMPANY, INC.

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

Docket 4293. Complaint, Aug. 30, 1940—Decision, Aug. 27, 1941

Where a corporation engaged in the manufacture of pipes and other articles, and in the competitive interstate sale and distribution of its merchandise, including certain assortments thereof so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, a typical assortment consisting of a number of pipes, together with a punchboard for use in their sale to consumers under a plan by which, as thereon explained, those securing certain numbers were entitled to a pipe, the value of which exceeded the 5 cents paid for a chance, and purchasers who did not thus qualify received nothing for their money other than the privilege of a punch—

Sold such assortments to wholesalers and jobbers and, directly or indirectly, to retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, involving game of chance to procure a pipe at much less than its normal price, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its merchandise, contrary to an established public policy of the United States Government, and in competition with many who were unwilling to use a method involving chance or contrary to public policy, and refrained therefrom;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell its merchandise in preference to that of aforesaid competitors, and with the effect, through use of said method and because of said game of chance, of unfairly diverting trade in commerce to it from its said competitors, to the substantial injury of competition in commerce:

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

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.

Mr. W. Lee Helms, 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 Continental Briar Pipe Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the