

Complaint

IN THE MATTER OF

THE THOMAS PAGE MILL COMPANY, INC., AND
PIEDMONT WHOLESALE GROCERY 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 4286. Complaint, Aug. 29, 1940—Decision Oct. 1, 1941

Where a corporation engaged in the milling and interstate sale and distribution of flour, during a certain period selling large quantities to a wholesale grocery company, 88 percent of the outstanding stock of which was owned by three individuals engaged as Minetree Brokerage Co., and which was served in an executive capacity by one of the three—

Paid, on such sales, during said period, a brokerage fee of 20 cents a barrel to said three individuals, who, in the transactions in question, were the agents of said grocery company and acted in fact for it:

Held, That in so paying and granting such brokerage fees, it violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. P. C. Kolinski for the Commission.

Doran, Kline, Cosgrove, Jeffrey & Russell, of Topeka, Kans., for Thomas Page Mill Co., Inc.

Mr. William T. Powers, of Piedmont, Mo., for Piedmont Wholesale Grocery Co.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, hereinafter more particularly designated and described, since June 19, 1936, have violated, and are now violating, the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C., title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect as follows:

PARAGRAPH 1. Respondent, The Thomas Page Mill Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at Norris and Quincy Streets, Topeka, Kans. This respondent is engaged in the milling, distribution, and sale of flour.

PAR. 2. Respondent, Piedmont Wholesale Grocery Co., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at Piedmont, Mo. This respondent is engaged in the general wholesale merchandise business.

PAR. 3. In the course and conduct of its business as aforesaid, since June 19, 1936, respondent, The Thomas Page Mill Co., Inc., has been and is now selling flour to purchasers located in various States of the United States, and causing said merchandise to be shipped and distributed by it to said purchasers located in various States of the United States, and particularly in the States of Nebraska, Missouri, and Kentucky. One of said purchasers to whom respondent sells and ships said merchandise is the respondent, Piedmont Wholesale Grocery Co.

Since June 19, 1936, in the course of making such sales of said merchandise in commerce, respondent, The Thomas Page Mill Co., Inc., has engaged in the practice of paying brokerage fees and granting allowances or discounts in lieu of brokerage upon such purchases by buyers for their own account, including the Piedmont Wholesale Grocery Co., and said respondent Piedmont Wholesale Grocery Co. has received and accepted allowances or discounts in lieu of brokerage upon its purchases of merchandise from respondent The Thomas Page Mill Co., Inc.

PAR. 4. The paying of brokerage fees and granting of allowances in lieu thereof by respondent, The Thomas Page Mill Co., Inc., to buyers upon their purchases as aforesaid, and the receipt and acceptance of such brokerage fees or allowance in lieu thereof by said respondent Piedmont Wholesale Grocery Co. upon its purchases from respondent The Thomas Page Mill Co., Inc., in the manner and form hereinabove set forth, is in violation of the provisions of subsection (c) of section 2 of the act described in the preamble hereof.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (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 August 29, 1940, issued its complaint which was subsequently served in this proceeding upon the parties respondent named in the caption hereof, charging them with violating the provisions of subsection (c) of section 2 of said Clayton Act as amended. On September 16, 1940, respondents filed their answers to the complaint. Thereafter, a stipulation was entered into by respondent The Thomas Page Mill Co., Inc., whereby it was stipulated and agreed that a statement of facts signed and executed by said

respondent, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts, to make its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, the answers of respondents, and the stipulation entered into by respondent The Thomas Page Mill Co., Inc., said stipulation having been approved, accepted and filed: And the Commission, having duly considered the same and being now fully advised in the premises, is of the opinion that subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, has been violated by one of the respondents, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Piedmont Wholesale Grocery Co., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at Piedmont, Mo., and is engaged in a general wholesale merchandise business.

PAR. 2. The charges in the complaint against respondent Piedmont Wholesale Grocery Co., are denied by this respondent in its answer and are not supported by any evidence in the record.

PAR. 3. Respondent The Thomas Page Mill Co., Inc., hereinafter referred to as "respondent," is a corporation organized and existing under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at Topeka, Kans. Respondent is engaged in the milling, sale, and distribution of flour to purchasers located in various States of the United States, and causes said flour to be shipped and distributed to purchasers located in various States of the United States, and particularly in the States of Nebraska, Missouri, and Kentucky.

PAR. 4. From March 19, 1938, to November 10, 1939, respondent sold and shipped large quantities of flour to the Poplar Bluff Wholesale Grocery Co., located at Poplar Bluff, Mo. On such sales of flour respondent paid a brokerage fee of 20 cents per barrel to T. A. Ward, Carr Ward, and Wilma Ward, trading as Minetree Brokerage Co. During said period of time the brokerage so paid amounted to \$1,578.25.

Order

33 F. T. C.

PAR. 5. During the period from March 19, 1938, to November 10, 1939, T. A. Ward and Wilma Ward owned 88 percent of the outstanding capital stock of the Poplar Bluff Wholesale Grocery Co., and Carr Ward rendered services of an executive nature to said Poplar Bluff Wholesale Grocery Co. These individuals, trading under the name of Minetree Brokerage Co., in the transactions of sales of flour by the respondent to the Poplar Bluff Wholesale Grocery Co. during the period from March 19, 1938, to November 10, 1939, were the agents, and acted in fact for and on behalf of the Poplar Bluff Wholesale Grocery Co.

CONCLUSION

Respondent The Thomas Page Mill Co., Inc., in paying and granting brokerage fees of 20 cents per barrel to T. A. Ward, Carr Ward, and Wilma Ward, trading as Minetree Brokerage Co., upon purchases of flour for the Poplar Bluff Wholesale Grocery Co., in interstate commerce, as set forth in the foregoing findings as to the facts, violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

There being no evidence to sustain the charges of the complaint against respondent Piedmont Wholesale Grocery Co., the complaint against this respondent should be dismissed.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondent The Thomas Page Mill Co., Inc., and respondent Piedmont Wholesale Grocery Co., and a stipulation as to the facts entered into between respondent The Thomas Page Mill Co., Inc., and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon respondent The Thomas Page Mill Co., Inc., findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent The Thomas Page Mill Co., Inc. 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 respondent The Thomas Page Mill Co., Inc., its officers, representatives, agents, and employees, in connection with

1437

Order

the sale of flour in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from paying or granting anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof to any purchaser on or in connection with purchases for such purchaser's account or to an agent, representative or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of such purchaser of respondent's goods.

It is further ordered, That the respondent The Thomas Page Mill Co., Inc., 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.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Piedmont Wholesale Grocery Co.

IN THE MATTER OF
JOHN H. DAVIS AND DALE S. DAVIS, TRADING AS
NORMANDIE ET CIE

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

Docket 3341. Complaint, Feb. 26, 1938—Decision, Oct. 6, 1941

Where two individuals engaged in the manufacture of perfumes and kindred products, and in competitive interstate sale and distribution thereof; directly or by implication—

- (a) Represented that their products were made or compounded in France and imported into the United States in finished form and ready for use, through such statements on labels and cartons of their perfume as "Normandie et Cie—Pois de Senteur—Paris, France," "Parfums—Normandie—Paris," "Qualite Superieure," and "True Flower Fragrances—Made in France," and through prominently displaying, in small folders enclosed with each vial of perfume, the words "Paris" and "France" and the statement "Imported True Flower Fragrances"; and
- (b) Represented thereby and through such statements, on letterheads and invoices following their trade name "Normandie et Cie," as "11 Rue des Champs Asnieres, pres Paris, France. U. S. Sales Division: 92 Maplewood Street, Watertown, (Boston), Massachusetts," that they had a place of business in France where such products were manufactured;

Facts being that their perfume was domestically made by them through importing from France certain perfume essences or compounds in bulk, to which they added domestic alcohol, the latter substance making up about 75 percent of the finished product; their bottles and cartons and the advertising matter included therewith were made in the United States, and all their operations were carried on in this country;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that their products were those preferred perfumes manufactured or compounded in France and imported into the United States, and to cause it to purchase substantial quantities of their product because of such belief, and with result that trade was diverted unfairly to them from their competitors, many of whom do not misrepresent their products or the place of origin thereof:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Charles S. Cox for the Commission.

Mr. David S. Grant, *Mr. Harry Ehrlich* and *Walsh & Walsh*, of Boston, Mass., for respondents.