

Complaint

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IN THE MATTER OF

MILES BROKERAGE COMPANY, INC., MILES & COMPANY, INC., MILES-BRADFORD COMPANY, AND MILES-KANE 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 4519. Complaint, June 12, 1941—Decision, Oct. 22, 1941

Where a corporation engaged in Pennsylvania in conducting a brokerage business, acting as an intermediary in purchase and sale of commodities, principally foodstuffs, between numerous sellers and certain buyers, with office for transaction of said business in Buffalo, capital stock of which was held by 22 stockholders who also owned and controlled a majority interest in three corporations selling groceries, foodstuffs, and allied products at wholesale in the three trading areas in Pennsylvania, in which were located their respective principal places of business—

(a) Received and accepted, from sellers to one or more of said wholesale grocery concerns, brokerage fees, and commissions ranging from a fraction of 1 percent to 5 percent of the sales price of such purchases by said wholesalers, acting in all of such transactions, in fact for and on behalf of said three corporate wholesale grocers;

With the result that such majority stockholders of said wholesale grocers received from sellers, indirectly, in the form of cash dividends paid upon their stockholdings in said corporate broker, a substantial portion of the brokerage secured on purchases made by said wholesalers; and

Where said three corporate wholesalers—

(b) Received indirectly from sellers a substantial portion of the brokerage secured on their purchases by said corporate broker in the form of the use as buying office of the equipment and facilities of the latter's Buffalo office, maintained from the proceeds of said brokerage fees:

Held, That in so receiving and accepting brokerage fees and commissions from sellers upon purchases of commodities, said brokerage concern and said three corporate wholesalers 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.

Smith & Maine, of Clearfield, Pa., for respondents.

COMPLAINT

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

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the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Miles Brokerage Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal corporate office located at Clearfield, Pa. This respondent engages in a brokerage business, acting as an intermediary in transactions of sale and purchase of commodities, principally foodstuffs, between numerous sellers and certain buyers. Respondent maintains an office for the transaction of said brokerage business at 176 Niagara Frontier Food Terminal, Buffalo, N. Y.

PAR. 2. Respondent, Miles & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at DuBois, Pa.

PAR. 3. Respondent, Miles-Bradford Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Bradford, Pa.

PAR. 4. Respondent, Miles-Kane Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Kane, Pa.

PAR. 5. The respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., are engaged in the business of selling groceries, foodstuffs, and allied products at wholesale, in the trading areas in the State of Pennsylvania represented by the cities of DuBois, Bradford, and Kane.

These respondents place orders for a substantial portion of the goods, wares, and merchandise, particularly foodstuffs by them required in the ordinary conduct of their respective businesses with sellers who are, in most cases, located in States of the United States other than the State of Pennsylvania, through the brokerage firm of Miles Brokerage Co., Inc. As a result of the transmission and execution of said orders, as aforesaid, goods, wares, and merchandise, particularly foodstuffs, are, in the case of each such order and in a continuous succession of such orders, sold, transported, and delivered by one or more of such sellers across State lines to Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co.

PAR. 6. The capital stock of respondent, Miles Brokerage Co., Inc., is held by 22 stockholders. Stockholders owning 97½ percent of respondent, Miles Brokerage Co., Inc., outstanding capital stock are identified with respondents, Miles & Co., Inc., Miles-Bradford Co.,

and Miles-Kane Co., as stockholders, directors, officers, attorneys, auditors, salesmen, buyers, or managers, and said group likewise own and control a majority interest in the capital stock of each of said three respondent corporations. Said stockholders of the Miles Brokerage Co., Inc., share in the corporation's earnings and profits realized from its brokerage business, through the receipt of cash dividends which are declared and paid at stated intervals. William E. Miles, the president of respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., is a stockholder in respondent, Miles-Brokerage Co., Inc., and takes an active interest in its affairs. His brother, Wade H. Miles, though not a stockholder, is vice president of respondent, Miles Brokerage Co., Inc., and its managing officer, receiving therefor a substantial compensation.

PAR. 7. In the course and conduct of the buying and selling transactions hereinabove referred to, resulting in the delivery of goods, wares, and merchandise, particularly foodstuffs, in interstate commerce from one or more sellers to respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., the respondent, Miles Brokerage Co., has been and is now receiving and accepting from said sellers brokerage fees and commissions, the same being a certain percentage (from a fraction of 1 percent to 5 percent) of the sales price of such purchases. Since June 19, 1936, respondent, Miles Brokerage Co., has been and is now receiving and accepting from sellers brokerage fees and commissions upon the purchases of Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co. in the manner above described in substantial amounts.

PAR. 8. In all of the transactions of purchase and sale hereinabove referred to, the respondent, Miles Brokerage Co., Inc., has acted in fact for and on behalf of Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co.

PAR. 9. As a result of the operation of the brokerage business of Miles Brokerage Co., Inc., as set forth in paragraph 6 hereof, the stockholders, directors, officers, attorneys, auditors, salesmen, buyers, and managers of respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co. receive from sellers indirectly, in the form of cash dividends paid upon their stockholding in Miles Brokerage Co., Inc., a substantial portion of the brokerage secured on purchases made by Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co.

PAR. 10. Respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co. receive indirectly from sellers a substantial portion of the brokerage secured on their purchases by Miles Brokerage Co., Inc., in the form of the use of the equipment and facilities of the Buffalo office of the respondent, Miles Brokerage Co., Inc., as a buy-

ing office in connection with various transactions of purchase of merchandise required in the operation of their respective businesses. Such equipment and facilities are maintained from the proceeds of brokerage fees and commissions received by Miles Brokerage Co., Inc., upon aforesaid purchases.

PAR. 11. The receipt and acceptance of such brokerage fees and commissions by said respondent, Miles Brokerage Co., Inc., upon the purchases of Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., while acting in fact for said purchasers, and the receipt and acceptance of brokerage in the form of buying office services and facilities by said respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., upon their own purchases 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 June 12, 1941, 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. After the issuance of said complaint and the filing of respondent's answers, a stipulation was entered into by respondents whereby it was stipulated and agreed that a statement of facts signed and executed by respondents by their attorneys, 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 and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers of respondents, and stipulation of facts, said stipulation of facts having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, and being of the opinion that subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by

the respondents, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Miles Brokerage Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal corporate office located at Clearfield, Pa. This respondent engages in a brokerage business, acting as an intermediary in transactions of sale and purchase of commodities, principally foodstuffs, between numerous sellers and certain buyers. Respondent maintains an office for the transaction of said brokerage business at 176 Niagara Frontier Food Terminal, Buffalo, N. Y.

PAR. 2. Respondent, Miles & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at DuBois, Pa.

PAR. 3. Respondent, Miles-Bradford Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Bradford, Pa.

PAR. 4. Respondent, Miles-Kane Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Kane, Pa.

PAR. 5. The respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., are engaged in the business of selling groceries, foodstuffs, and allied products at wholesale, in the trading areas in the State of Pennsylvania represented by the cities of DuBois, Bradford, and Kane.

PAR. 6. The capital stock of respondent, Miles Brokerage Co., Inc., is held by 22 stockholders. The said stockholders of Miles Brokerage Co., Inc., own and control a majority interest of the capital stock of Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co. Said stockholders of Miles Brokerage Co., Inc., share in the corporation earnings and profits realized from its corporate business, through the receipt of cash dividends.

PAR. 7. In the course and conduct of the buying and selling transactions hereinabove referred to, resulting in the delivery of goods, wares, and merchandise, particularly foodstuffs, in interstate commerce from one or more sellers to respondents Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., the respondent, Miles Brokerage Co., has been and is now receiving and accepting from said sellers brokerage fees and commissions, the same being a certain

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percentage (from a fraction of 1 percent to 5 percent) of the sales price of such purchases. Since June 19, 1936, respondent, Miles Brokerage Co., has been and is now receiving and accepting from sellers brokerage fees and commissions upon the purchases of Miles & Co., Inc., Miles-Bradford, and Miles-Kane Co. in the manner above described in substantial amounts.

PAR. 8. In all of the transactions of purchase and sale hereinabove referred to, respondent, Miles Brokerage Co., Inc., has acted in fact for and on behalf of Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co.

PAR. 9. As a result of the operation of the brokerage business of Miles Brokerage Co., Inc., as set forth herein, the majority stockholders of the respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., receive from sellers indirectly, in the form of cash dividends paid upon their stockholding in Miles Brokerage Co., Inc., a substantial portion of the brokerage secured on purchases made by Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co.

However, the Commission does not have before it any evidence that any of the brokerage income received by Miles Brokerage Co., Inc., from the transactions of purchase and sale hereinabove referred to, was paid or transmitted directly as such by Miles Brokerage Co., Inc., to Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co.

PAR. 10. Respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co. receive indirectly from sellers a substantial portion of the brokerage secured on their purchases by Miles Brokerage Co., Inc., in the form of the use of the equipment and facilities of the Buffalo office of the respondent, Miles Brokerage Co., Inc., as a buying office in connection with various transactions of purchase of merchandise required in the operation of their respective businesses. Such equipment and facilities are maintained from the proceeds of brokerage fees and commissions received by Miles Brokerage Co., Inc., upon aforesaid purchases.

CONCLUSION

In receiving and accepting brokerage fees and commissions from sellers upon purchases of commodities as set forth in the foregoing findings as to the facts, the respondents have violated the provisions of section 2 (c) 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, the answers of respondent

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ents and a stipulation as to the facts entered into between the respondents 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 respondents 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 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 in purchasing commodities in interstate commerce, the respondents, Miles & Co., Inc., Miles-Bradford Co., Miles-Kane Co., their officers, representatives, agents, and employees, 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 the respondents.

It is further ordered, That the respondent, Miles Brokerage Co., Inc., its officers, agents, representatives, and employees, do forthwith cease and desist from:

1. Accepting or receiving from sellers, directly or indirectly, in connection with the purchase of commodities in interstate commerce by Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., under the facts and circumstances as set forth in paragraph 8 of the findings of fact, any brokerage fees or commissions, or any allowance or discount in lieu of brokerage, in whatever manner or form said brokerage fees, allowances, and discounts may be offered, allowed, granted, paid, or transmitted; and

2. Accepting or receiving from sellers, directly or indirectly, in connection with the purchase of commodities in interstate commerce by any person, partnership, firm, or corporation, in connection with which purchases said Miles Brokerage Co., Inc., acting as intermediary or agent, is subject to the direct or indirect control, or acts in fact for or in behalf, of any of said purchasers, any brokerage fees or commissions, or any allowance or discount in lieu of brokerage, in whatever manner or form said brokerage fees, allowances, and discounts may be offered, allowed, granted, paid, or transmitted.

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It is further ordered, That each of the said respondents Miles Brokerage Co., Inc., Miles & Co., Inc., Miles-Bradford Co., Miles-Kane Co., corporations, shall within 60 days after service upon each of them 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.

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IN THE MATTER OF

LOUIS KELLER AND WILLIAM CARSKY, INDIVIDUALLY
AND TRADING AS CASEY CONCESSION COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3413. Complaint, May 10, 1938—Decision, Oct. 28, 1941*

Where two individuals engaged in the competitive interstate sale and distribution, to operators and concessionaires of moving pictures, moving picture and burlesque theaters, tent shows, medicine shows and circuses, of assortments of candy and other merchandise, such as toy cameras, hosiery, perfume, etc. so packed and assembled as to involve the use of a lottery scheme or game of chance, when sold and distributed to the consuming public, typical assortment being composed of 110 small uniform cartons each containing an equal number of pieces of candy and an additional article of merchandise, some of which had a retail value in excess of the 5 cent charged for the carton—

Sold such assortments to their customers, by whom they were resold to the consuming public in accordance with the aforesaid sales plan, and thereby placed in the hands of others the means of conducting lotteries or games of chance in the sale of their products;

With the result that many dealers in and ultimate consumers of candy were attracted by their said method of packing said products and by the element of chance involved in the sale thereof, and were thereby induced to purchase such candy in preference to that of their competitors who do not use such methods, and with tendency and capacity to divert to themselves trade and custom from their said competitors and exclude them from the candy trade, lessen competition in such trade and create a monopoly thereof in themselves and in such other distributors as do use such a method, and to deprive the purchasing public of the benefit of free competition:

Held, That such acts and practices were all to the prejudice and injury of the public and their competitors, and contrary to established public policy of the United States Government, and constituted unfair methods of competition in commerce.

Before *Mr. Charles F. Diggs*, *Mr. John W. Addison*, and *Mr. W. W. Sheppard*, trial examiners.

Mr. D. C. Daniel for the Commission.

Mr. Morris A. Haft, 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 Louis Keller and William Carsky, individually and trading as Casey Concession Co.,