

Complaint

IN THE MATTER OF

CENTRAL BUYING SERVICE, 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

Docket 4259. Complaint, Aug. 22, 1940—Decision, July 8, 1942

Where a corporation, engaged in New York City as resident commission buyer in providing information, facilities, and purchasing services to operators of retail stores or buyers of commodities such as millinery, engaged in resale thereof through retail stores or departments thereof which they operated, and in executing their orders—either following instructions or exercising their own judgment as to details—by transmitting them to seller manufacturers, competitively engaged with other manufacturers and wholesalers, who shipped the goods to the buyer for whose account the purchases were made, and billed him and received payment direct—

Received and accepted from sellers on merchandise purchased by it for and on behalf of aforesaid buyers, and while acting in fact as their agent, buying representative, or other intermediary, commissions varying from 3 to 7 percent of the sales price of the goods thus purchased:

Held, That such receipt and acceptance, and payment of brokerage fees and commissions, as above set forth, constituted a violation of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. Alfred McCormack and *Mr. Harmon Duncombe*, of the firm of Cravath, DeGersdorff, Swaine & Wood, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated has, since June 19, 1936, violated and is now violating the provisions of subsection (c) Section 2, of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, c. 592, Section 1, 49 Stat, 1526 (15 U. S. C. A. 13 (c)), hereby issues its complaint:

PARAGRAPH 1. Central Buying Service, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 101 West Thirty-Seventh Street, New York, N. Y.

PAR. 2. Respondent is a resident commission buyer and since the date of its incorporation has been and is now engaged in the business of providing information, facilities, and purchasing services to a number

of individuals, partnerships, and corporations in the purchase of commodities such as millinery. These individuals, partnerships, and corporations operate retail stores or departments of retail stores or otherwise resell such goods. Their places of business are located in various States of the United States and the District of Columbia.

PAR. 3. For many years last past respondent has received and it is now receiving and accepting orders from buyers to purchase for their accounts certain requirements. Following instructions as to number, price, color, fabric, and style contained in each order so received, or if the orders contain no such instructions, then exercising through its officers and employees its own judgment as to such details, respondent executes these said orders by transmitting the same to various manufacturers and purchasing for buyers' accounts the desired merchandise. The millinery or other goods so purchased is selected by respondent from displays made each day in its office by salesmen of various manufacturers or such merchandise is selected from displays made in the showrooms of manufacturers. Occasionally buyers will personally visit the New York market and will call at the office of respondent where they are offered the facilities and buying service of the said respondent. These buyers are advised as to the showrooms maintained by manufacturers and are conducted to these showrooms by an officer or employee of respondent who assists them in selecting and purchasing the desired merchandise.

All orders for the purchase of merchandise, whether such orders are placed by respondent upon orders received through the mail or from selections made by the buyer as above set forth, are made out on forms supplied and provided for that purpose by respondent and delivered to the manufacturers from whom merchandise is so purchased. The manufacturers ship the goods direct to the buyer for whose account such purchases were made, bill the buyer direct, and receive payment direct from the buyer. Respondent makes no charge to and receives no compensation from its clients for the purchasing service rendered and facilities supplied as hereinabove set forth. Respondent at all times has been, and is now acting in fact for and in behalf of such clients.

PAR. 4. In the course and conduct of its business aforesaid, in the manner, method, and form as aforesaid, respondent, acting in fact for and in behalf of buyers, caused and now causes the said manufacturers to ship, and the said manufacturers do ship, commodities so purchased from the State in which said commodity was located at the time of the purchase into and through various other States of the United States and the District of Columbia, directly to the purchasers thereof in the States of their respective location.

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Findings

PAR. 5. In the course and conduct of its business, as aforesaid, and while acting in fact for and in behalf of buyers as aforesaid, respondent has, since June 19, 1936, received and accepted and is now receiving and accepting from some sellers a commission on all merchandise purchased from such manufacturers by respondent for and on behalf of buyers as aforesaid. The commission so received and accepted by respondent varies from 3% to 7% of the sales price of the goods so purchased.

PAR. 6. The receipt and acceptance by respondent of commissions from sellers on purchases made from such sellers by respondent, for the account of and while acting in fact for and in behalf of such buyers, in the manner and under the circumstances as hereinabove set forth, is in violation 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, 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 August 22, 1940, issued and subsequently served its complaint in this proceeding upon the party respondent named in the caption hereof, charging said respondent 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 answer, the Commission entered its order granting 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 hearing as to said facts. The respondent has also waived oral argument and the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the same 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. Central Buying Service, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 101 West Thirty-seventh Street, New York, N. Y.

PAR. 2. Respondent is a resident commission buyer and since the date of its incorporation has been and is now engaged in the business of providing information, facilities, and purchasing services to a number of individuals, partnerships, and corporations in the purchase of commodities such as millinery. These individuals, partnerships and corporations operate retail stores or departments of retail stores or otherwise resell such goods. Their places of business are located in various States of the United States and in the District of Columbia.

PAR. 3. For many years last past respondent has received and it is now receiving and accepting orders from buyers to purchase for their accounts certain requirements. Following instructions as to number, price, color, fabric, and style contained in each order so received, or if the orders contain no such instructions, then exercising through its officers and employees its own judgment as to such details, respondent executes these said orders by transmitting the same to various manufacturers and purchasing for buyers' accounts the desired merchandise. The millinery or other goods so purchased is selected by respondent from displays made each day in its office by salesmen of various manufacturers or such merchandise is selected from displays made in the showrooms of manufacturers. Occasionally buyers will personally visit the New York market and will call at the office of respondent, where they are offered the facilities and buying service of the said respondent. These buyers are advised as to the showrooms maintained by manufacturers and are conducted to these showrooms by an officer or employee of respondent who assists them in selecting and purchasing the desired merchandise.

All orders for the purchase of merchandise, whether such orders are placed by respondent upon orders received through the mail or from selections made by the buyer as above set forth, are made out on forms supplied and provided for that purpose by respondent and delivered to the manufacturers from whom merchandise is so purchased. The manufacturers ship the goods direct to the buyer for whose account such purchases were made, bill the buyer direct, and receives payment direct from the buyer. Respondent makes no charge to and receives no compensation from its clients for the purchasing service rendered and facilities supplied as hereinabove set forth. Respondent at all times has been and is now acting in fact for and in behalf of such clients.

PAR. 4. In the course and conduct of its business aforesaid, in the manner, method, and form as aforesaid, respondent, acting in fact for and in behalf of buyers, caused and now causes the said manufacturers to ship, and the said manufacturers do ship, commodities so purchased from the State in which said commodity was located at the time of the

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purchase into and through various other States of the United States and the District of Columbia, directly to the purchasers thereof in the States of their respective location.

PAR. 5. In the course and conduct of its business, as aforesaid, and while acting in fact for and in behalf of buyers as aforesaid, respondent has, since June 19, 1936, received and accepted and is now receiving and accepting from some sellers a commission on all merchandise purchased from such manufacturers by respondent for and on behalf of buyers as aforesaid. The commission so received and accepted by respondent varies from 3 to 7 percent of the sales price of the goods so purchased.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the respondent, Central Buying Service, Inc., a corporation, is engaged in business in commerce as agent, buying representative, or other intermediary in furnishing trade information, facilities, and purchasing services in buying from representative competitive sellers, manufacturers, and wholesalers of millinery or other commodities for many retail dealers, department stores, and other purchasers; and has acted in fact for, or in behalf of, or under the direct or indirect control of such buyers, in purchasing millinery or other commodities from said competitive sellers, manufacturers, and wholesalers. In the course of such commerce and while acting in fact as agent, buying representative, or other intermediary in connection with the buying of millinery and other commodities for such buyers, respondent received remuneration in the form of commissions or otherwise from such representative competitive sellers, manufacturers, and wholesalers from whom respondent purchased such millinery and other commodities for such retail dealers, department stores, and other purchasers in violation of the provisions of subsection (c) of Section 2 of "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).

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 duly filed by respondent, Central Buying Service, Inc., a

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corporation, which answer admits all of the material allegations of fact set forth in said complaint to be true and waives all other intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion herein that respondent, Central Buying Service, Inc., a corporation, has violated the provisions of "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).

It is ordered, That the respondent, Central Buying Service, Inc., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device in or in connection with the purchase of millinery or other commodities in commerce, as commerce is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting directly or indirectly anything of value as brokerage, commission, or other compensation, or any allowance or discount in lieu thereof, from any seller on or in connection with purchases made from such seller (a) when such purchases are made for respondent's own account, or (b) when such purchases are made as agent or buying representative of the purchaser, or (c) when in making such purchases respondent is acting in fact for or in behalf, or is subject to the direct or indirect control, of the purchaser.

It is further ordered, That the 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.

Complaint

IN THE MATTER OF

LAWRENCE W. POWERS, TRADING AS L. W. POWERS CO.

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

Docket 4299, Complaint, Sept. 4 1940—Decision, July 8, 1942

Where an individual, engaged in New York City as commission resident buyer of women's ready-to-wear apparel for a number of retail dealers in various states who advised him of the types, quantities, sizes, colors, and materials of the garments they desired, for shipment to them by sellers direct, and the price they wished to pay, and who, along with others similarly purchasing through said or other commission resident buyers, were competitively engaged with retailers who bear the expense of maintaining buying offices for the selection and purchase of merchandise in said market, center of the women's ready-to-wear apparel industry of the United States—

Received and accepted from sellers competitively engaged commissions amounting usually to 5 percent of the price paid on such purchases, in which said individual acted as agent, buying representative, or other intermediary for said buyers:

Held, That such receipt of compensation in the form of commission on purchases from competitive sellers constituted a violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission,

Mr. Alfred McCormack and Mr. Harmon Duncombe of the firm of Cravath, DeGersdorff, Swaine & Wood, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party 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, Lawrence W. Powers, is an individual, trading as L. W. Powers Co., with his principal office and place of business located at 1328 Broadway, New York, N. Y. Respondent is engaged in the business of a commission resident buyer of women's ready-to-wear apparel, and as such, respondent acts as buying agent for, and in behalf of, a number of retail dealers in transactions of purchase and sale of such merchandise.