

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.

The manner of operation of respondent's business is that of receiving from various retail dealers for whom he acts as agents, requests, orders, or requisitions to purchase such merchandise upon specifications as to quantity, size, color, kind of cloth, type of garment, and price. When such an order is received by respondent, he contacts various manufacturers of such merchandise and places the order with the source of supply offering the specified requirements on terms and conditions most favorable from the standpoint of the purchaser. Generally the merchandise so purchased is shipped by the manufacturer directly to the purchaser. On the orders so placed by respondent, he receives from the sellers of such merchandise a brokerage fee or commission, usually 5 percent of the purchase price paid by the purchaser.

PAR. 2. New York City is the center of the women's ready-to-wear apparel industry in the United States, and the retail dealers in such merchandise, located in States of the United States other than the State of New York undergo expense in purchasing such merchandise in the New York market. Many of such retail dealers maintain buying offices in New York City, the operating and overhead expenses of which are borne by such retail dealers. Retail dealers purchasing through commission buyers are generally competitively engaged with retail dealers who purchase through buyers who are compensated by the retail dealers employing them and with retail dealers who bear the expense incident to the maintenance of New York buying offices.

PAR. 3. In the course and conduct of his business since June 19, 1936, respondent has placed orders for such merchandise with manufacturers thereof located in the State of New York on behalf of retail dealers located in other States of the United States, pursuant to which orders, such merchandise has been shipped and transported by the sellers thereof from the State of New York across State lines to the respective retail dealer purchasers.

PAR. 4. In the course of the purchasing transactions in interstate commerce as set forth herein, respondent, since June 19, 1936, while acting as purchasing agent for and in behalf of the purchasers of such merchandise in the manner hereinabove described, has received and accepted from the sellers thereof brokerage fees or commissions in substantial amounts.

PAR. 5. The foregoing acts and practices are 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 monop-

Findings

olies 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 September 4, 1940, issued and subsequently served its complaint in this proceeding upon the party respondent named in the caption hereof, charging said respondent with violation of 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. Respondent, Lawrence W. Powers, is an individual, trading as L. W. Powers Co. and having his principal office and place of business at 1328 Broadway, New York, N. Y. Respondent is a commission resident buyer of women's ready-to-wear apparel.

PAR. 2. In the course and conduct of his aforesaid business, while acting in behalf of retail dealers located in various States of the United States other than New York, respondent places orders for women's ready-to-wear apparel with manufacturers of such products located in New York City. Pursuant to such orders, the merchandise so purchased is by said sellers caused to be transported through and into various States of the United States to the locations of the respective purchasers.

PAR. 3. The center of the women's ready-to-wear apparel industry of the United States is in New York City. Retailers located throughout the United States purchase supplies of such merchandise in the New York City market. Respondent's business as a commission resident buyer consists of acting for and in behalf of and as agent for a number of retail dealers in the purchase of women's ready-to-wear apparel from manufacturers thereof located in New York City. These retail dealers who are clients of respondent advise him of the types, quantity, sizes, colors, and materials of the garments desired

Conclusion

35 F. T. C.

and the price they wish to pay. Upon receipt of such requisitions or orders from his clients, respondent calls on various manufacturers of merchandise of the class ordered, inspects the goods they have for sale, and places the order with the manufacturer from whom the purchase can be made most advantageously from the standpoint of the dealer or dealers he represents. When orders so placed are filled, the merchandise is shipped by the manufacturer directly to the purchasing dealer. On orders placed by respondent as aforesaid, he receives from the seller a commission which usually amounts to 5 percent of the price paid by the purchaser.

Many retail dealers maintain buying offices in New York City for the selection and purchase of supplies of merchandise in the New York City market, including women's ready-to-wear apparel, and such dealers bear the expense of maintaining and operating buying offices. Retail dealers who purchase through respondent or other commission resident buyers who secure their compensation from the sellers are generally competitively engaged with retail dealers who bear the expense of maintaining and compensating their own buying representatives.

PAR. 4. In the course of the transactions of purchase in commerce as above set forth, respondent since June 19, 1936, while acting as purchasing agent for and in behalf of buyers of such merchandise in the manner described, has received and accepted from the sellers thereof brokerage fees or commissions in substantial amounts.

CONCLUSION

From the aforesaid facts and circumstances the Commission concludes that respondent, Lawrence W. Powers, an individual, trading as L. W. Powers Co., is engaged as agent, buying representative, or other intermediary in the purchase in commerce of women's ready-to-wear apparel from representative competitive sellers, and as has acted in fact for or in behalf of or under the direct or indirect control of the retail dealers for whom such purchases were made. While acting as agent, buying representative, or other intermediary in the purchase of merchandise as aforesaid, respondent received compensation in the form of commissions or otherwise from competitive sellers from whom purchases of merchandise were made, 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

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, Lawrence W. Powers, an individual, trading as L. W. Powers Co., which answer admits all of the material allegations of fact set forth in said complaint 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 said respondent 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 respondent, Lawrence W. Powers, an individual, trading as L. W. Powers Co., or under any other name, his agents, employees, and representatives, directly or through any corporate or other device, in or in connection with the purchase of women's ready-to-wear apparel and 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 him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
THE MILK CAP STATISTICAL BUREAU ET AL.

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

Docket 4448. Complaint, Jan. 16, 1941—Decision, July 8, 1942

Where an unincorporated trade association, which had been the code authority for the paper disc milk bottle cap industry under the National Industrial Recovery Act and which, following the invalidation of said Act and the manager's suggestion to the members that they should not give up "advantages such as cooperative action and good will" which they had "been able to develop," was continued for the purpose of cooperating in the maintenance of uniform trade practices in the sale and distribution of paper disc bottle caps; and the eleven member-manufacturers of said association or Bureau, engaged in the manufacture and interstate sale of products in question to jobbers and dairies, with a combined business amounting to about 75 percent of that of the entire industry; acting under the supervision and regulation of said Bureau—

- (a) Entered into and actively cooperated in agreements and combinations directed to the establishment of uniform prices, discounts, terms and conditions of sale and freight charges, uniform and simultaneous changes of prices, and uniform classifications and rating of customers, in connection with the sale and distribution of paper disc milk bottle caps in commerce; and

Where said "Bureau," in pursuance of such agreements—

- (b) Rated and classified the approximately 50,000 dairies located throughout the United States according to the number of caps used annually, and distributed such ratings and classifications among the member-manufacturer who agreed to, and did, adhere thereto in determining prices and discount at which dairies should be sold; and
- (c) Confined sale of the products in question exclusively to jobbers and dairy consumers, and prevented sales to "super-jobbers," mill agents, cooperative buying agencies, bottle exchanges, and other consumers; and

Where said manufacturer-members, to make more effective the operation of such agreements—

- (d) Filed with said "Bureau" price lists, copies of invoices containing name of purchasers, quantities purchased and prices therefor, customer lists, and copies of contracts and conditions of sale; and

Where said "Bureau"—

- (e) Checked data filed by manufacturer-members in accordance with its policy and practice of policing the industry to determine whether said manufacturers carried out said agreements;

With the result that price competition among manufacturers concerned in the sale of paper disc milk bottle caps in commerce was practically eliminated

Held, That such agreements and combinations and things done pursuant thereto under the circumstances set forth, were all to the prejudice of the public had a dangerous tendency to, and did, hinder and prevent price competition among said member manufacturers in the sale of products in question placed in said association and members the power to control and enhance