

Syllabus

IN THE MATTER OF

STANLEY J. REMUS, DOING BUSINESS AS STANLEY J. REMUS & COMPANY; P. E. HARRIS & COMPANY; KELLEY-CLARKE COMPANY¹; AND OCEANIC SALES 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

Docket 4833. Complaint, Sept. 14, 1942—Decision, Nov. 20, 1943

Where an individual engaged, principally as a jobber, in interstate buying and selling in his own name and for his own account of canned salmon, tuna, shrimp, and sardines which he purchased from a corporation operating canneries in Alaska and selling its pack and that of others; and from a Washington State distributor, also—

(a) Received and accepted from aforesaid sellers on said purchases of canned fish in his own behalf and on his own account, brokerage fees, and discounts in lieu thereof in substantial amounts through monthly rebates from them in amount equal to an agreed percentage of all such purchases in his own behalf during the preceding month; and

Where aforesaid canning corporation and said corporate distributor, engaged in interstate sale and distribution of canned fish—

(b) Paid and delivered to said individual brokerage fees, or allowances, or discounts in lieu thereof, in substantial amounts through payment, among other ways, of monthly rebate checks in amounts determined as aforesaid:

Held, That such receipt and acceptance by said individual of brokerage fees or commissions in lieu of brokerage, and such payment thereof by said concerns, violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. Edward M. Keating, of Chicago, Ill., for Stanley J. Remus.

Bogle, Bogle & Gates and Eggerman, Rosling & Williams, of Seattle, Wash., for P. E. Harris & Co.

Medley & Haugland, of Seattle, Wash., for Kelley-Clarke Co.

¹ Order of Commission dismissing complaint as to Kelley-Clarke Co. made as of November 5, 1942, follows:

This matter coming on to be heard by the Commission upon the motion of respondent Kelley-Clarke Company through its attorneys, Eggerman, Rosling & Williams of 1824 Exchange Building, Seattle, Wash., to dismiss the complaint against said respondent on the grounds that the respondent was a corporation which has been voluntarily dissolved and the assets distributed to shareholders on September 15, 1942, and the Commission having duly considered the matter and now being fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice as to Kelley-Clarke Co.

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

PARAGRAPH 1. Respondent, Stanley J. Remus, is an individual, doing business under the firm name and style of Stanley J. Remus & Co. Respondent Remus, has his principal office and place of business at 437 West Ontario Street, Chicago, Ill., and is now and for many years prior hereto has been engaged in business, principally as a jobber, buying and selling in his own name and for his own account canned salmon, tuna, shrimp, and sardines (hereinafter called canned fish).

PAR. 2. Respondent, P. E. Harris & Co., is a corporation, organized under the laws of the State of Washington with its principal office and place of business located at 1222 Dexter Horton Building, Seattle, Wash., and is engaged in the business of canning fish and in the distribution and sale of its own pack and the pack of other canners. Said respondent operates several canneries in the Territory of Alaska, one of which is located in each of the following places: Hawk Inlet, Rose Inlet, False Pass, and Ketchikan, Alaska.

Respondent, Kelley-Clarke Co., is a corporation, organized under the laws of the State of Washington with its principal office and place of business located in the Exchange Building at 321 West Fourth Avenue, Seattle, Wash., and is engaged in the distribution and the sale of canned fish. Respondent, Kelley-Clarke Co., operates several branch offices and warehouses, one of which is located at each of the following points: Los Angeles and San Francisco, Calif.; Portland, Oreg.; and Spokane and Tacoma, Wash.

Respondent, Oceanic Sales Co., is a corporation, organized under the laws of the State of Washington, with its principal office and place of business located in the Smith Tower Building, Seattle, Wash., and is engaged in the distribution and sale of canned fish.

Each of the three respondents named in paragraph 2 will hereinafter be referred to as "seller respondents."

PAR. 3. Each of said seller respondents is engaged in the sale of canned fish and other products to respondent, Remus, and to other customers residing in States other than the respective States in which the seller respondents are located. Pursuant to the purchase orders and instructions of respondent, Remus, and other customers of seller

respondents, canned fish are sold, shipped, and transported by each of said seller respondents into and across State lines to the respondent, Remus, and to other customers.

Respondent, Remus, in the course and conduct of his said business as a jobber, purchases a substantial portion of his requirements of canned fish from each of the seller respondents who are located in States other than the State in which respondent Remus is located. Pursuant to his purchase orders and instructions such commodities are caused to be shipped and transported by the respective seller respondents thereof across State lines to him or to his customers.

PAR. 4. Respondents, P. E. Harris & Co., a corporation; Kelley-Clarke Co., a corporation; and Oceanic Sales Co., a corporation, since June 19, 1936, in connection with the sale in interstate commerce of canned fish to respondent, Remus, for his own account, have transmitted, paid, and delivered, and do transmit, pay, and deliver directly or indirectly to said Stanley J. Remus, trading as Stanley J. Remus & Co., brokerage fees or allowances and discounts in lieu thereof in substantial amounts.

Among other methods of paying such brokerage fees, discounts, and allowances in lieu thereof, each of the seller respondents customarily transmits and pays to the respondent, Remus, monthly rebate checks in amounts equal to an agreed percentage of the invoice price of the canned fish sold by the respective seller respondents to the respondent, Remus, in his own name and/or for his own account during the preceding month.

PAR. 5. Respondent, Remus, since June 19, 1936, in connection with the purchase of his requirements of canned fish in interstate commerce, in his own behalf and for his own account, from each of said seller respondents, has been and is now receiving, and accepting from said seller respondents, brokerage fees, or allowance and discounts in lieu of brokerage fees, or allowances and discounts in lieu of brokerage in substantial amounts.

Among the methods of so receiving and accepting brokerage fees, discounts, and allowances in lieu thereof, respondent, Remus, customarily receives and accepts monthly rebates from each of the seller respondents in an amount equal to an agreed percentage of the invoice prices of all canned fish purchased by said respondent, Remus, in his own name and/or in his own behalf during the preceding month from each of the respective seller respondents.

PAR. 6. The receipt and acceptance by the respondent, Stanley J. Remus, doing business as Stanley J. Remus & Co., of brokerage fees or allowances and discounts in lieu of brokerage as aforesaid and the transmission and payment of the aforesaid brokerage fees or allow-

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ances and discounts in lieu of brokerage to him by P. E. Harris & Co., a corporation; Kelley-Clarke Co., a corporation; and Oceanic Sales Co., a corporation; in the manner and under the circumstances hereinabove set forth, are in violation of the provisions of section 2, subsection (c) of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936.

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 the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), the Federal Trade Commission on September 14, 1942, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with violating the provisions of subsection (c) of section 2 of said act, as amended.

After the issuance of said complaint, the respondent, Kelley-Clarke Co., a corporation, presented evidence of the dissolution of said corporation and the distribution of its assets on September 15, 1942, and the complaint herein as to this respondent was dismissed by the Commission on November 5, 1942.

The other respondents, set out in the caption, namely, Stanley J. Remus, doing business as Stanley J. Remus & Co., P. E. Harris & Co., and Oceanic Sales Co., in due course filed answers to said complaint, in which each respondent respectively denied that its acts and practices were in violation of subsection (c) of section 2 of the Clayton Act, as amended.

Thereafter each of the respondents, namely, Stanley J. Remus, doing business as Stanley J. Remus & Co., P. E. Harris & Co., and Oceanic Sales Co., moved and received permission from the Commission to withdraw their original answers and to file in lieu thereof substitute answers admitting all material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearings as to said facts.

Each of said respondents in said substitute answers set out that since the Commission's complaint was issued the practices complained of had been voluntarily discontinued, but that in view of the times they desired to avoid the expense and inconvenience incidental to contesting the issues.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers,

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, Stanley J. Remus, is an individual, doing business under the firm name and style of Stanley J. Remus & Co. Respondent, Remus, has his principal office and place of business at 437 West Ontario Street, Chicago, Ill., and is now and for many years prior hereto has been engaged in business, principally as a jobber, buying and selling in his own name and for his own account canned salmon, tuna, shrimp, and sardines (hereinafter called canned fish).

PAR. 2. Respondent, P. E. Harris & Co., is a corporation, organized under the laws of the State of Washington with its principal office and place of business located at 1222 Dexter Horton Building, Seattle, Wash., and is engaged in the business of canning fish and in the distribution and sale of its own pack and the pack of other canners. Said respondent operates several canneries in the Territory of Alaska, one of which is located in each of the following places: Hawk Inlet, Rose Inlet, False Pass, and Ketchikan, Alaska.

Respondent, Oceanic Sales Co., is a corporation, organized under the laws of the State of Washington, with its principal office and place of business located in the Smith Tower Building, Seattle, Wash., and is engaged in the distribution and sale of canned fish.

Each of the two respondents named in paragraph 2 will hereinafter be referred to as "seller respondents."

PAR. 3. Each of said seller respondents is engaged in the sale of canned fish and other products to respondent, Remus, and to other customers residing in States other than the respective States in which the seller respondents are located. Pursuant to the purchase orders and instructions of respondent, Remus, and other customers of seller respondents, canned fish are sold, shipped, and transported by each of said seller respondents into and across State lines to the respondent Remus and to other customers.

Respondent, Remus, in the course and conduct of his said business as a jobber, purchases a substantial portion of his requirements of canned fish from each of the seller respondents who are located in States other than the State in which respondent, Remus, is located. Pursuant to his purchase orders and instructions such commodities are caused to be shipped and transported by the respective seller respondents thereof across State lines to him or to his customers.

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PAR. 4. Respondents, P. E. Harris & Co., a corporation, and Oceanic Sales Co., a corporation, since June 19, 1936, in connection with the sale in interstate commerce of canned fish to respondent, Remus, for his own account, have transmitted, paid, and delivered, and do transmit, pay, and deliver, directly or indirectly to said Stanley J. Remus, trading as Stanley J. Remus & Co., brokerage fees, or allowances and discounts in lieu thereof in substantial amounts.

Among other methods of paying such brokerage fees, discounts, and allowances in lieu thereof, each of the seller respondents customarily transmits and pays to the respondent, Remus, monthly rebate checks in amounts equal to an agreed percentage of the invoice price of the canned fish sold by the respective seller respondents to the respondent, Remus, in his own name and/or for his own account during the preceding month.

PAR. 5. Respondent, Remus, since June 19, 1936, in connection with the purchase of his requirements of canned fish in interstate commerce, in his own behalf and for his own account, from each of said seller respondents, has been and is now receiving, and accepting from said seller respondents, brokerage fees, or allowances and discounts in lieu of brokerage fees, or allowances and discounts in lieu of brokerage in substantial amounts.

Among the methods of so receiving and accepting brokerage fees, discounts and allowances in lieu thereof, respondent, Remus, customarily receives and accepts monthly rebates from each of the seller respondents in an amount equal to an agreed percentage of the invoice prices of all canned fish purchased by said respondent, Remus, in his own name and/or in his own behalf during the preceding month from each of the respective seller respondents.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the respondent, Stanley J. Remus, an individual, doing business as Stanley J. Remus & Co., was engaged in business in commerce as a buyer of canned salmon, tuna, shrimp and sardines, and other sea food products; that said respondent purchased such commodities in his own name and for his own account for resale; that interstate purchases of said commodities were made from P. E. Harris & Co. and Oceanic Sales Co.; and that on said purchases from said sellers brokerage fees or commissions in lieu of brokerage were paid to, and were received and accepted by, respondent, Stanley J. Remus, doing business as Stanley J. Remus & Co., in the manner and under the circumstances hereinabove set forth, in violation

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of the provisions of section 2, subsection (c) of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936.

The Commission further concludes that the respondents, P. E. Harris & Co., a corporation, and Oceanic Sales Co., a corporation, are engaged in the interstate distribution and sale in commerce of canned fish, and that said respondents have sold and distributed said commodities to Stanley J. Remus, doing business as Stanley J. Remus & Co., in his own name and for his own account for resale, and have paid and granted to such buyer on his own purchases of said canned fish and other commodities brokerage fees or commissions in lieu of brokerage on such purchases. Wherefore the Commission concludes that the acts and practices engaged in by respondents, P. E. Harris & Co. and Oceanic Sales Co., in the manner and under the circumstances hereinabove set forth, are in violation of the provisions of section 2, subsection (c) of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answers filed by the respondents, Stanley J. Remus, doing business as Stanley J. Remus & Co., P. E. Harris & Co., and Oceanic Sales Co., which answers admit all of the material allegations of the complaint to be true, and waive all other intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and conclusions herein that said respondents, Stanley J. Remus, doing business as Stanley J. Remus & Co., P. E. Harris & Co., and Oceanic Sales Co. have 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) (U. S. C. title 15, sec. 13).

It is ordered, That the respondent, Stanley J. Remus, individually, and trading as Stanley J. Remus & Co., or under any other name, and his agents, employees, and representatives, directly or through any corporate or other device, in connection with the purchase of canned fish or other commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from P. E. Harris & Co., Oceanic Sales Co., or any other seller, anything of value as a commission, brokerage, or other compensation, or any allowance or

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discount in lieu thereof, upon purchases of canned fish or other commodities made for respondent's own account.

It is further ordered, That the respondents, P. E. Harris & Co., a corporation, and Oceanic Sales Co., a corporation, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the sale and distribution of canned fish and other commodities in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to respondent, Stanley J. Remus, doing business as Stanley J. Remus & Co., or to any other purchaser, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon purchases of canned fish or other commodities made by, or for the account of, any such purchaser.

It is further ordered, That said respondents, Stanley J. Remus, doing business as Stanley J. Remus & Co., P. E. Harris & Co., a corporation, and Oceanic Sales Co., a corporation, within 60 days after service upon them of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which said respondents are complying and have complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

WINTERINE MANUFACTURING COMPANY

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

Docket 4945. Complaint, Apr. 16, 1943—Decision, Nov. 22, 1943

Where a corporation engaged in the manufacture and interstate sale and distribution of a so-called antifreeze solution which it sold to garages and service stations; through advertisements in newspapers, radio continuities, advertising folders, and otherwise, directly and by implication—

- (a) Represented that its said product furnished protection to the cooling systems of automobiles and other combustion type engines against freezing and other damaging effects, was safe and dependable for use as recommended, and had proved itself to be a superior permanent type antifreeze; and
- (b) Represented that it protected the entire cooling system of automobile engines against corrosion, rust, and deterioration, would not cause rust or other damage to the hose connections, radiator finish, or engine, and would not evaporate or clog passages in the cooling system;

The facts being that its said product, composed of a calcium chloride base, was inferior to antifreeze solutions containing glycerine or alcohol bases and was not safe and dependable, but use thereof caused rust, corrosion, clogged passages, and other serious damage to the engines, radiators, ignition wire, spark plugs, hose connections, and exterior finish of automobiles;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and of inducing it to purchase substantial quantities of said product as a result of such mistaken belief:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

McDonough & McDonough, of Denver, Colo., 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 Winterine Manufacturing Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows: