

IN THE MATTER OF

WALLACE T. AUSTELLE AND JOHN W. FLINTOM DOING
BUSINESS AS AUSTELLE-FLINTOM 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 5130. Complaint, Feb. 7, 1944—Decision, Aug. 12, 1944

Where two partners engaged in the purchase of canned fruits and vegetables, citrus juices, sugar, rice, beans, salt and other miscellaneous commodities for their own account, and in their resale to jobbers, wholesalers, retail chain stores, and other purchasers without the state direct from sellers;

Received and accepted, directly or indirectly from sellers in connection with such purchases of commodities for their own account, in interstate commerce as aforesaid, brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts:

Held, That said receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof, from sellers, under the circumstances set forth, was in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Felder & Rosen, of Orangeburg, S. C., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and herinafter 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, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents, Wallace T. Austelle and John W. Flintom, are partners, doing business under the name and style of Austelle-Flintom Company, having their principal office and place of business located in the Atlantic Coast Line Warehouse, on Dukes Avenue, in Orangeburg, S. C. Respondents are engaged in the business of purchasing canned fruits and vegetables, citrus juices, sugar, rice, beans, salt, and other miscellaneous commodities for their own account, and of reselling the same to jobbers, wholesalers, retail chain stores and other purchasers.

Since June 19, 1936, respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of South Carolina, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondents or, pursuant to instructions and directions from respondents, to the respective purchasers to whom such commodities have been resold by respondents.

Since June 19, 1936, respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of South Carolina, which sellers, pursuant to instructions and directions from respondents, have caused the commodities so purchased by respondents to be shipped and transported from the State of South Carolina across State lines to the respective purchasers to whom such commodities have been resold by respondents.

PAR. 2. Since June 19, 1936, in connection with the purchases of such commodities by respondents for their own account in interstate commerce as aforesaid, respondents have received and accepted, directly or indirectly, from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 3. Since June 19, 1936, respondents have resold such commodities purchased for their own account as set forth in paragraphs 1 and 2 hereof to purchasers located in States other than the State of South Carolina, pursuant to which sales respondents have caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the resale of such commodities in interstate commerce as aforesaid, respondents have granted and allowed, directly or indirectly brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 4. The receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondents upon the purchases of commodities by the respondents, as set forth herein, and also the granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondents to purchasers upon the resale of commodities by respondents as set forth herein, 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 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 February 7, 1944, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging said respondents 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 respondents' answer, the Commission entered its order granting respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting the material allegations of fact set forth in said complaint, except certain allegations in paragraph three thereof, and waiving all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and said 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. Respondents, Wallace T. Austelle and John W. Flintom, are partners, doing business under the name and style of Austelle-Flintom Company, having their principal office and place of business located in the Atlantic Coast Line Warehouse, on Dukes Avenue, in Orangeburg, S. C. Respondents are engaged in the business of purchasing canned fruits and vegetables, citrus juices, sugar, rice, beans, salt, and other miscellaneous commodities for their own account, and of reselling the same to jobbers, wholesalers, retail chain stores and other purchasers.

Since June 19, 1936, respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of South Carolina, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondents or, pursuant to instructions and directions from respondents, to the respective purchasers to whom such commodities have been resold by respondents.

Since June 19, 1936, respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of South Carolina, which sellers, pursuant to instructions and directions from respondents, have caused the commodities so purchased by respondents to be shipped and transported from the State of South Carolina across State lines to the respective purchasers to whom such commodities have been resold by respondents.

PAR. 2. Since June 19, 1936, in connection with the purchases of such commodities by respondents for their own account in interstate commerce, as aforesaid, respondents have received and accepted, directly or indirectly, from sellers, brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondents upon the purchases of commodities by respondents, as set forth herein, is in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, which answer admits, with certain exceptions, the material allegations of fact set forth in said complaint and waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 respondents, Wallace T. Austelle and John W. Flintom, partners, doing business under the name and style of Austelle-Flintom Company, or under any other name, and their agents, employees, and representatives, directly or through any corporate or other device, in connection with the purchase of canned fruits and vegetables, citrus juices, sugar, rice, beans, salt, or any 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 any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon purchases made for respondents' own account.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
THE AMERICAN PRODUCTS COMPANY AND THE
ZANOL PRODUCTS COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 2336. Order, August 16, 1944

Order modifying prior modified cease and desist order of January 25, 1940, 30 F.T.C. 424, so as to require respondents, their officers, etc. in connection with offering, etc., in commerce, of food and toilet products and household cleaners, to cease and desist from misrepresenting the volume of respondents' business, or risk or expense incurred by their salesmen or distributors, or using the term "free" to describe articles offered as compensation for distribution thereof, or misrepresenting earnings or profits of sales persons or dealers, as in said order below set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, in which answer respondents admit the material allegations of facts set forth in said complaint, and the Commission having duly made and issued its findings as to the facts, conclusion and modified order to cease and desist dated January 25, 1940; and the Commission having further considered said modified order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a further modification of the order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondents to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said modified order to cease and desist; and the Commission having heard oral argument of counsel and having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondents, The American Products Company, a corporation, and The Zanol Products Company, a corporation, their officers, representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of food and toilet products and household cleaners in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any manner the volume of respondents' business.
2. Representing that salesmen or distributors of respondents' merchandise incur no risk or expense when in fact respondents require a deposit from such persons for the goods, samples or sales equipment supplied.
3. Using the term "free," or any other term of similar import or meaning, to describe or refer to articles offered as compensation for distributing respondents' merchandise.