

IN THE MATTER OF
SOUTHGATE BROKERAGE COMPANY, 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 BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4321. Complaint, Aug. 25, 1942—Decision, Sept. 12, 1944

Where a corporation, with offices and warehouses in four other cities, engaged principally in the interstate purchase for resale in its own name and for its own account, of food products and other merchandise, which became its own property, and was stored in its warehouses and dealt with as such under its absolute title; and engaged also as a broker, soliciting and obtaining orders in behalf of various sellers and receiving as compensation for such service, brokerage paid by its seller principals;

In connection with the purchase in commerce of said food products and other merchandise in its own behalf and for its own account—

Received and accepted, in many instances and for a number of years, brokerage or allowances and discounts in lieu thereof, from sellers of such merchandise, in some cases, through remittance by check, and in others through deducting the brokerage, or discount or allowance in lieu thereof, from the seller's invoice in remitting;

Held, That such receipt and acceptance by it of brokerage or allowance and discounts in lieu thereof, as above set forth, constituted a violation of subsec. (c) of sec. 2 of the Clayton Act, as amended.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Edward S. Ragsdale for the Commission.

Mr. William P. Smith, of Washington, D. C., and *Mr. Charles L. Kaufman*, of Norfolk, Va., 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 (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, Southgate Brokerage Co., Inc., is a corporation, organized and existing under the laws of the State of Virginia with its principal office and place of business located at 249 West Tazewell Street, Norfolk, Va. The respondent also operates four branch offices and warehouses located at Winston-Salem, Charlotte, Wilmington, and Greensboro, N. C. The respondent is engaged in the purchase, sale, and distribution of food products, canned goods, and miscellaneous merchandise.

PAR. 2. Respondent is now, and for many years last past, has been engaged in business, principally, as a jobber, buying in its own name for resale various food products, canned goods and miscellaneous merchandise

and reselling such products. To a minor extent, respondent acts as a broker of food products, canned goods and miscellaneous merchandise.

PAR. 3. Respondent, in the course and conduct of its said business as a jobber, purchases a substantial portion of its requirements of food products, canned goods, and miscellaneous merchandise from sellers located in States other than the States in which the respondent is located. Pursuant to said purchases and instructions such commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent or to respondent's customers.

PAR. 4. Respondent, since June 19, 1936, in connection with the purchase of its requirements of food products, canned goods, and miscellaneous merchandise, in interstate commerce, in its own behalf and for its own account, for resale, from numerous sellers located in States other than the States where the respondent is located, has been and is now receiving and accepting from numerous sellers of said food products, canned goods, and miscellaneous merchandise, brokerage fees or allowances and discounts in lieu of brokerage in substantial amounts.

The respondent receives such brokerage fees, discounts and allowances in lieu thereof in many ways, including the following four ways:

1. By purchasing food products, canned goods and miscellaneous merchandise from sellers at prices lower than the same sellers sell such commodities and commodities of like grade and quality to other purchasers.

2. By obtaining such commodities at prices that are lower than the prices at which such commodities and commodities of like grade and quality are sold by such sellers to other purchasers and which correspond to an amount which reflects all or a part of the brokerage fees currently being paid by such sellers to brokers for selling in behalf of such sellers of such commodities.

3. By making deductions in lieu of brokerage from the invoices of certain sellers when paying such invoices.

4. By receiving from certain sellers monthly rebate checks representing the customary brokerage fees of such sellers.

PAR. 5. A representative but by no means a complete list of sellers who since June 19, 1936 have sold and delivered food products, canned goods, and miscellaneous merchandise to respondent for its own account, and who have allowed, granted, and paid, directly or indirectly, as hereinabove set out, or otherwise, brokerage fees or allowances or discounts in lieu thereof on respondent's purchases for its own account from said sellers is as follows:

C. H. Musselman & Co., Biglerville, Pa.

Connell Brothers Co. Ltd., Monterey, Calif.

Eastern Shore Canning Co., Inc., Machipongo, Va.

E. H. Hamlin Co., Seattle, Wash.

Fruitvale Canning Co., Inc., Oakland, Calif.

The Larsen Co., Green Bay, Wis.

Morgan Packing Co., Austin, Ind.

Pomona Products Co., Griffin, Ga.

Rosenberg Brothers & Co., San Francisco, Calif.

Whitney & Co., Seattle, Wash.

Windsor Products Co., Bridgeton, N. J.

PAR. 6. The receipt and acceptance by the respondent of brokerage fee or allowances and discounts in lieu of brokerage by respondent as set forth above is 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 the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on August 25, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Southgate Brokerage Co., Inc., a corporation, charging it with the violation of subsection (c) of Section 2 of said Clayton Act, as amended. After the filing by respondent of its answer to the complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter 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. The respondent, Southgate Brokerage Co., Inc., is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business located at 249 West Tazewell Street, Norfolk, Va. Respondent also operates four branch offices and warehouses located at Winston-Salem, Charlotte, Wilmington, and Greensboro, all in N. C. Respondent is engaged principally in the purchase, in its own name and behalf and for its own account, of food products and other merchandise, and in the resale and distribution of such merchandise. The trade area in which respondent sells its merchandise comprises all of North Carolina, the eastern portion of Virginia, and that portion of South Carolina which borders on North Carolina.

PAR. 2. In the course and conduct of its business, respondent purchases a substantial portion of its merchandise from sellers located in various States of the United States other than the States in which respondent maintains places of business. Such merchandise is caused by respondent to be shipped and transported by the respective sellers thereof across State lines to respondent or to respondent's customers. In the purchase of its merchandise, respondent maintains and at all times mentioned herein has maintained a course of trade in such merchandise in commerce among and between various States of the United States.

PAR. 3. In addition to the purchase of food products and other merchandise in its own name and behalf and for its own account, and the resale of such merchandise, respondent also acts as a broker or sales agent, representing various sellers of merchandise and soliciting and obtaining orders on behalf of such seller principals from purchasers located in respondent's trade area. As compensation for its services in negotiating such sales, respondent is paid brokerage by its seller principals. This phase of respondent's business operations is not involved in the present proceeding.

PAR. 4. The purchases made by respondent in its own name and behalf and for its own account constitute approximately sixty percent of its total volume of business. The merchandise so purchased is stored by respondent in its own warehouses, and is in all respects its own property to deal with as it sees fit. Respondent insures the merchandise in its own name and at its own expense, pays such taxes as may be levied on the merchandise, and resells it to such purchasers and at such prices and upon such terms as its judgment may dictate, reaping a profit or sustaining a loss thereon, as the case may be. If the merchandise is lost or damaged while in transit from the seller to respondent, respondent files claims against the carrier for such loss or damage in its own name and for its own benefit. In short, respondent's title to the merchandise is absolute. Respondent frequently enters into contracts of purchase with packers and canners of food products calling for the future delivery of large quantities of goods to respondent at fixed prices. In such cases, respondent's profit or loss on the transaction usually depends, of course, upon whether the market advances or declines after the contract is executed. Some of the canned food products purchased and resold by respondent bear respondent's own private trade-marks or brands, which are registered in the United States Patent Office. The labels for such goods are supplied by respondent to the packer or canner, who affixes them to the cans or other containers in which the goods are packaged.

PAR. 5. In connection with the purchase in interstate commerce of such food products and other merchandise in its own behalf and for its own account, respondent in many instances receives and accepts and for a number of years last past has received and accepted from the sellers of such merchandise, brokerage or allowances and discounts in lieu of brokerage. The brokerage is usually received by respondent in one of two ways. In some cases, the seller remits the amount of the brokerage to respondent by check. In other cases, respondent in remitting to the seller the purchase price of the merchandise deducts the brokerage, or a discount or allowance in lieu thereof, from the seller's invoice. The amount of brokerage thus received and accepted by respondent is substantial. For example, the amount received on purchases made by respondent between July 1, 1941, and December 31, 1941, was \$25,873.68.

CONCLUSION

The receipt and acceptance by the respondent of brokerage, or allowances and discounts in lieu thereof, as hereinabove set forth, is in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

Order

39 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of subsection (c) of Section 2 of the 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 (15 U. S. C., Sec. 13).

It is ordered, That the respondent, Southgate Brokerage Co., Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu thereof, upon purchases made for respondent's own account.

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.

Syllabus

IN THE MATTER OF

FRANK J. MARKS, TRADING AS NATIONAL COMMITTEE
FOR EDUCATION AND AS PRESIDENT AND TREASURER
OF BOOK-A-WEEK CLUB, INC. AND BOOK-A-WEEK
CLUB, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4877. Complaint, Dec. 17, 1942—Decision, Sept. 13, 1944*

Where an individual, who traded as "National Committee for Education," and was president and treasurer, prior to its dissolution, of his "Book a Week Club, Inc.," engaged in the interstate sale and distribution of two sets of reference books respectively designated as "Standard American Encyclopedia" and "University of Knowledge Wonder Books"; through advertisements in newspapers, and periodicals, circulars and other advertising material, and radio broadcasts,—

- (a) Falsely represented that the "National Committee for Education was an organization, national in scope, consisting of a group of teachers and educators which sponsored and endorsed the Book-A-Week Club" and expressly edited and compiled valuable literature for distribution to the members of said Club, and that his "Standard American Encyclopedia" set of books was sold and distributed in cooperation with said National Committee for Education to members of the Book-A-Week Club, Inc.;

The facts being that said National Committee for Education was merely a trade name assumed by said individual in connection with the sale and distribution of the reference books hereinabove described, which he purchased from the publisher on a consignment basis; said "The Book-A-Week Club, Inc.," was a corporation dominated and controlled by said individual, and its so-called "membership" consisted merely of purchasers of said reference books, who did not receive any literature expressly edited and compiled for them; and the use of aforesaid trade name and sale and distribution of his said reference books by and through his said corporate entity, were a subterfuge to further the false representations that said reference books were endorsed by and sold in cooperation with some group of educators or teachers;

- (b) Falsely represented that said "Standard American Encyclopedia" contained complete and comprehensive information with respect to every conceivable subject and was one of the most important sets of books ever written, and had a retail value of \$65; that his "University of Knowledge Wonder Books" had a retail value of \$100; that a limited quantity of said books was being offered to charter members of the Book-A-Week Club, Inc., in good standing, and that said books were available at the prices quoted only to such members;

The facts being that value of the sets was not \$65 or \$100, respectively, but in the normal and ordinary course of business the books sold at 49¢ per volume for the regular edition and 69¢ for the deluxe, plus postage, for the 20 volume "Encyclopedia," and 59¢ per volume plus postage for the other 24 volume set of "Wonder Books"; and

- (c) Represented that the first volume of his said sets would be delivered free, and that persons receiving the first so-called "free" volume were obligated to accept and