

Complaint

IN THE MATTER OF
B. F. SHRIVER COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(C) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5217. Complaint, Sept. 18, 1944—Decision, Oct. 23, 1944

Where a corporation engaged in packing and canning corn, peas, beans, lima beans, succotash, tomatoes, asparagus, beets, and other vegetable products, and in the interstate sale and distribution thereof—

Paid or granted, directly or indirectly, brokerage or commissions, compensation, allowances, or discounts in lieu thereof, to buyers of such products upon purchases made in their own names and for their own accounts:

Held, That such practice was in 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.

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, B. F. Shriver Co., is a corporation, organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Westminster, Md. The respondent also operates plants located at Westminster and New Windsor, Md., and Littlestown, Pa.

PAR. 2. Respondent, B. F. Shriver Co., is now engaged, and for many years prior hereto, has engaged in the business of packing, canning, distributing and selling canned corn, peas, beans, lima beans, succotash, tomatoes, asparagus, beets, and other vegetable products (all of which are hereinafter called vegetable products), in its own name and for its own account for resale, directly to buyers located in States other than the State in which respondent is established. As a result of respondent's instructions, such vegetable products are shipped and transported across State lines to such buyers, who are located in various States of the United States other than the State where the respondent is established.

The respondent, to distinguish its vegetable products from the vegetable products sold by competitors and to facilitate sales, utilizes registered trade-marks and brands for the various types and grades of vegetable products it sells. Among and representative of respondent's brands are:

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Blue Ridge
A No. I
Lady Host

New Windsor
World's Favorite
Shriver

PAR. 3. The respondent, since June 19, 1936, in connection with the interstate sale and distribution of vegetable products has been and is now paying or granting or has paid or granted, directly or indirectly, commissions, brokerage or other compensation or allowances or discounts in lieu thereof to buyers of said vegetable products sold under its own labels, unlabeled and under buyers' labels.

PAR. 4. The respondent, since June 19, 1936, has distributed and sold and distributes and sells vegetable products directly to certain buyers in interstate transactions as aforesaid and has paid to such buyers commission or brokerage fees on purchases made by them in their respective names and for their respective accounts. The respondent's method of distribution and sale, as hereinafter described, is representative of the sales methods of a number of East Coast distributors.

The buyers above referred to customarily designate themselves as "brokers," "merchandise brokers," or as "primary distributors," although they are known to the trade as "buying brokers" or "speculative brokers." Such "buying brokers" or "speculative brokers" customarily operate by placing orders for merchandise with those sellers, and only with those sellers, who will grant and pay them commissions or brokerage fees on their own purchases. Some such buyers are large scale buyers and sellers of vegetable products distributed under their own private brands, which brands usually show the name and address of the buyer, but not of the packer, and identify the merchandise as being the product of the particular buyer who owns the label.

Some such buyers customarily purchase their private brand vegetable products from respondent and many other sellers and often during a given season, after shopping the market, will purchase such commodities under the same private brands from several competing sellers, placing their orders where they are able to secure the most favorable prices and terms.

Such buyers place their orders for merchandise with respondent and other sellers, who, on receiving and accepting such orders, deliver the merchandise to a common carrier for delivery, but require that the buyer pay the purchase price as a condition precedent of the delivery of the merchandise. If such merchandise is lost or damaged in transit, such buyers file claims in their own names and collect damages from the carrier for their own account.

On receipt of the merchandise, such buyers insure such merchandise and warehouse it in their own warehouses or in public warehouses, and thereafter generally utilize the warehouse receipts covering the merchandise, together with the insurance contract, as collateral or security to obtain bank loans.

Such buyers mask these buying operations under the fictionalized designation of "brokers," "merchandise brokers," or "primary distributors," for the sole purpose of coloring the name and method of their buying operations in order to collect commissions or brokerage fees from respondent and from other sellers who will pay such buyers commissions or brokerage fees on their own purchases, notwithstanding the fact that it is well known

to be the custom of such buyers to invoice and sell such merchandise in their own names, for their own accounts, at their own prices, and on their own terms, and to assume full and complete credit risks.

PAR. 5. The acts and practices of the respondent in promoting sales of vegetable products by paying to buyers, directly or indirectly, commissions, brokerage or other compensation and allowances or discounts in lieu thereof, as set forth above, 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 September 18, 1944, 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 the respondent filed its answer in due course, which answer admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and 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. The respondent, B. F. Shriver Co., is a corporation, organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Westminster, Md. Respondent also operates plants located at Westminster and New Windsor, Md., and Littlestown, Pa.

PAR. 2. Respondent is now, and for many years prior hereto, has been engaged in the business of packing and canning corn, peas, beans, lima beans, succotash, tomatoes, asparagus, beets, and other vegetable products, and selling and distributing such products to buyers located in various States of the United States other than the States in which respondent maintains places of business, such products being shipped and transported across State lines to such buyers.

PAR. 3. Respondents since June 19, 1936, in connection with the interstate sale and distribution of its products, has paid or granted, directly or indirectly, brokerage, or commissions, compensation, allowances, or discounts in lieu thereof, to buyers of such products upon purchases made by such buyers in their own respective names and for their own respective accounts.

The record indicates that this practice has now been discontinued by respondent.

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CONCLUSION

The practice of the respondent, as herein found, was 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 the respondent, which answer admits all of 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 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 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, B. F. Shriver Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale and distribution of vegetable products or other commodities in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Paying or granting to any buyer, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu thereof, upon purchases made for such buyer'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
ARTHUR VON SENDEN COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5154. Complaint, Apr. 24, 1944—Decision, Oct. 25, 1944*

Where a corporation engaged in interstate sale and distribution of religious books, including the New Testament and a Catholic Prayer Book which were about $2\frac{3}{4}$ " by $4\frac{1}{2}$ " in size, with the front cover bearing an additional cover of steel, and which it designated as "Shield of Faith," "Heart-Shield Bible" and "Armored Bible"—

- (a) Represented and implied that its said books might stop bullets and save the lives of soldiers; that the life of one soldier had actually been saved because of the metal cover over a copy of the New Testament he carried; that such "armored" books were capable of deflecting bullets, shrapnel, or bayonets; and that the books fitted into the left breast pocket of the uniform and thereby protected the heart of the wearer; through circular letters, display cards, newspaper mats, and circulars which it furnished to its customers and prospective customers, and which reproduced a news item telling of the deflection of a bullet by a soldier's New Testament "with a metal heart shield" and such statements as "Armored New Testament or Catholic Prayer Book CAPABLE OF DEFLECTING BULLETS, SHRAPNEL OR BAYONETS. MAY SAVE A LIFE! THE HEART-SHIELD BIBLE FITS THE POCKET OVER THE HEART. THE ENGRAVED GOLD PLATED STEEL FRONT COVER PROTECTS THE HEART. IT FITS THE UNIFORM POCKET. With invasion at hand . . . it is more important than ever before . . . that you SEND YOUR SERVICE MAN a 'Shield of Faith' . . . TODAY";

The facts being that while there might have been isolated instances in which the carrying of a steel-covered copy of a Testament or Prayer Book was instrumental in preventing a wound or even saving the life of a soldier, its steel-covered books would not physically protect the person carrying one of them, or save his life; they were not capable of deflecting bullets, shrapnel, or bayonets; only in the event of a "spent" bullet would the book be sufficient to prevent the bullet from entering the body, in which case the book without the cover would be sufficient; said cover in fact created an additional hazard of causing a more serious wound, through distorting a bullet or deflecting a bayonet blow struck at an angle; while some pieces of shrapnel might be deflected, any book of about the same size and thickness would give the same protection; and the books did not "fit" the pocket of the uniform but were much smaller and did not necessarily protect nor fit over the heart of the wearer; and

- (b) Placed in the hands of its customers the means of making to the purchasing public such representations as above set out through recommending and suggesting to them that as a means of increasing their sales and profits they feature and utilize the aforesaid news item by means of such typical statements as "CASH IN ON THIS AMAZING EXPERIENCE OF A SOLDIER! ADVERTISE 'SHIELDS OF FAITH' NOW. SEND FOR NEWSPAPER MATS. One of the Great Stories of The War. Feature 'Shields of Faith' in your Show Window. We are enclosing a photographic reprint of one of the greatest stories that has come out of the war. This story appeared in many newspapers throughout the