

Complaint

IN THE MATTER OF

WM. ROY GLOVER AND RAY M. WILSON TRADING
AS GLOVER & WILSON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUB-SEC. (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 4835. Complaint, Sept. 16, 1942—Decision, Dec. 5, 1944

Where two individuals engaged in Arkansas under their trade name as broker in the sale of food products, particularly canned fruits and vegetables, and also in buying and selling such commodities for their own account—

Received and accepted from numerous sellers in other states, brokerage-fees, or allowances or discounts in lieu thereof, on many purchases of food products for their own account, through such typical practices as receiving from a California seller of sardines a brokerage fee amounting to approximately 3% off the invoice price through deduction of said amount therefrom on making payment, receiving from a California seller of dried fruit a brokerage fee of about 5%, and brokerage of about 3½% upon purchases of canned fish from a Washington seller, and from a California seller of canned fish a 5% allowance in lieu of brokerage, which they deducted from the invoice price on making payment:

Held, That such acts and practices, under the circumstances set forth, were in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. E. L. Haney, Jr., of Little Rock, Ark., and *Mr. William P. Smith*, of Washington, D. C., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondents, 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. Respondents, Roy Glover and Ray Wilson, are individuals, trading and doing business as Glover & Wilson with their principal office and place of business located at No. 1 Commercial Warehouse Building, Little Rock, Ark.

PAR. 2. Respondents are now engaged in the business of acting as a broker in the sale of food products, particularly canned fruits and vegetables.

Respondents have also been engaged in the business of buying and selling, for their own account, food products, particularly canned fruits and vegetables. The purchases which respondents have been making for their own account have been made ordinarily in the name of Glover & Wilson.

Orders have been placed by the respondents with various manufacturers, packers and sellers for various food products and the respondents cause many of the products which they purchase for their own account to be shipped and transported to them across State lines from the various places of business of those sellers from whom respondents purchase said products, many of such sellers being located and doing business in States other than the State of Arkansas.

PAR. 3. In the course and conduct of their business of buying food products for their own account in commerce, as aforesaid, the respondents have been and are now receiving and accepting from numerous sellers, brokerage fees or allowances or discounts in lieu thereof on many of said purchases for their own account.

As illustrative of the practices pursued by the respondents in receiving and accepting allowances and discounts in lieu of brokerage upon their own purchases of food stuffs are the following:

1. The respondents purchase sardines for their own account from the Val Vita Food Products Co. of Fullerton, Calif., and receive from such company a brokerage fee amounting to approximately 3% off of the invoice price, which brokerage fee is deducted from the invoice when the respondents make payment to this seller for such product.

2. The respondents purchase dried fruit for their own account from the West Coast Growers and Packers of Fresno, Calif., and receive from such seller a brokerage fee of approximately 5% which is paid by such seller to the respondents upon the purchases made by the respondents for their own account.

3. The respondents purchase canned fish from the Oceanic Sales Co. of Seattle, Wash., for their own account and receive from such seller a brokerage fee of approximately 3½% upon such purchase made from such seller by the respondents. The fee is paid directly by the seller to the respondents as brokerage upon the purchases of the respondents for their own account.

4. The respondents purchase canned fish for their own account from the Superior Fisheries, Inc., of Los Angeles, Calif., and receive from such company a 5% allowance in lieu of brokerage, which allowance is deducted by the respondents from the invoice price when payment is made by the respondents to this seller for such products.

PAR. 4. The aforesaid acts of respondents constitute a violation of subsection (c) of Section 2 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 (15 U. S. C., Sec. 13), the Federal Trade Commission on September 16, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Wm. Roy Glover and Ray M. Wilson, trading as Glover & Wilson, charging them with the violation of subsection (c) of Section 2 of

said Clayton Act, as amended. After the filing by respondents of their answer to the complaint, the Commission by order entered herein granted respondents' request for permission to withdraw such original answer and to substitute therefore an amended answer admitting all of the material allegations of fact set forth in the complaint but denying that the acts of respondents set forth in the complaint constitute a violation of the statute in question. The amended answer also waived all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission. Subsequently, the proceeding regularly came on for final hearing before the Commission upon the complaint and amended answer, 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 respondents, Wm. Roy Glover (referred to in the complaint as Roy Glover) and Ray M. Wilson (referred to in the complaint as Ray Wilson), are individuals, trading and doing business as Glover & Wilson, with their principal office and place of business located at No. 1 Commercial Warehouse Building, Little Rock, Ark.

Respondents are engaged in the business of acting as a broker in the sale of food products, particularly canned fruits and vegetables. Respondents are also engaged in the business of buying and selling such commodities for their own account, these purchases ordinarily being made in the name of Glover & Wilson.

PAR. 2. Respondents cause many of the products which they purchase for their own account to be shipped and transported to them across State lines from the various places of business of sellers located and doing business in States of the United States other than the State of Arkansas.

PAR. 3. In the course and conduct of their business of buying food products for their own account in interstate commerce, as aforesaid, the respondents have been and are now receiving and accepting from numerous sellers brokerage fees, or allowances or discounts in lieu thereof, on many of such purchases.

Illustrative of the practices pursued by the respondents in receiving and accepting allowances and discounts in lieu of brokerage upon their own purchases of foodstuffs are the following:

1. The respondents purchase sardines for their own account from a seller in Fullerton, Calif., and receive from such seller a brokerage fee amounting to approximately 3% off of the invoice price, which brokerage fee is deducted from the invoice when payment is made by the respondents.

2. The respondents purchase dried fruit for their own account from a seller in Fresno, Calif., and receive from such seller a brokerage fee of approximately 5%.

3. The respondents purchase canned fish from a seller in Seattle, Wash., for their own account, and receive from such seller a brokerage fee of approximately 3½% upon such purchases, such fee being paid directly by the seller to the respondents.

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4. The respondents purchase canned fish for their own account from a seller in Los Angeles, Calif., and receive from such seller a 5% allowance in lieu of brokerage, which allowance is deducted by the respondents from the invoice price when payment is made by them.

CONCLUSION

The acts and practices of respondents, as set forth above, are 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 amended answer of the respondents admitting all of the material allegations of fact in the complaint and waiving all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission; and the Commission having made its findings as to the facts and its conclusion that the respondents have 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 respondents, Wm. Roy Glover and Ray M. Wilson, individually, and trading as Glover & Wilson, or trading under any other name, and their 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 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.

Complaint

IN THE MATTER OF

W. M. MEADOR & COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUB-SEC. (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 4928. Complaint, Mar. 12, 1943—Decision, Dec. 5, 1944

Where a corporation engaged as a jobber in buying various food products and other merchandise and reselling the same, purchasing a substantial portion of its requirements from sellers in other states—

Received and accepted, in connection with such purchases in interstate commerce, in its own behalf and for its own account for resale, brokerage fees, or allowances and discounts in lieu thereof, in substantial amounts, from numerous sellers of such merchandise:

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

Mr. Edward S. Ragsdale for the Commission.

Mr. William P. Smith, of Washington, D. C., 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, W. M. Meador & Co., Inc., is a corporation, organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 104 North Commerce Street, Mobile, Ala. 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 as a jobber, buying in its own name, for its own account, for resale various food products, canned goods and miscellaneous merchandise and reselling such products.

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.