

Complaint

39 F. T. C.

IN THE MATTER OF

H. D. CHILDERS COMPANY

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 4938. Complaint, Apr. 2, 1943—Decision, Dec. 5, 1944

Where an individual long engaged in the purchase in his own name and for his own account of food products and other merchandise and in the resale thereof, purchasing a substantial portion of his requirements from sellers in other states—

Received and accepted, in connection with such purchases in his own name and for his own account, for resale, in interstate commerce, as aforesaid, brokerage fees, or allowances and discounts in lieu thereof, in substantial amounts, from numerous sellers of such commodities:

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 Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Harry Duvall Childers, is an individual, doing business as H. D. Childers Co., with his principal office and place of business located at 15 South Commerce Street, Mobile, Ala. The respondent is engaged in the purchase, sale and distribution of food products, canned sea food, and miscellaneous merchandise.

PAR. 2. Respondent is now, and for many years prior hereto has been, engaged in business buying in his own name and for his own account for resale various food products, canned sea food and miscellaneous merchandise, and reselling such products.

PAR. 3. Respondent in the course and conduct of his said business purchases a substantial portion of his requirements of food products, canned sea food and miscellaneous merchandise from sellers located in States other than the State 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 his requirements of food products, canned sea food and miscel-

laneous merchandise in interstate commerce in his own behalf and for his own account for resale, has been and is now receiving and accepting from numerous sellers of said food products, canned sea food and miscellaneous merchandise, brokerage fees or allowances and discounts in lieu of brokerage in substantial amounts.

PAR. 5. The receipt and acceptance by the respondent of brokerage fees 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 April 2, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Harry Duvall Childers, an individual, doing business as H. D. Childers Co., charging him with the violation of subsection (c) of Section 2 of said Clayton Act, as amended. After the filing by respondent of his answer to the complaint, the Commission by order entered herein granted respondent's request for permission to withdraw such original answer and to substitute therefor an amended answer admitting all of the material allegations of fact set forth in the complaint but denying that the acts of respondent 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 respondent, Harry Duvall Childers, is an individual, doing business as H. D. Childers Co., with his principal office and place of business located at 15 South Commerce Street, Mobile, Ala. Respondent is and for many years last past has been engaged in the purchase, in his own name and for his own account, of food products and other merchandise, and in the resale of such merchandise.

PAR. 2. Respondent in the course and conduct of his business purchases a substantial portion of his requirements of food products and other merchandise from sellers located in States of the United States other than the State of Alabama. Pursuant to respondent's purchases and instructions, such commodities are caused to be shipped and transported by the respective sellers thereof across State lines to respondent or to respondent's customers.

PAR. 3. Respondent since June 19, 1936, in connection with the purchase in his own name and for his own account, for resale, of food products and other merchandise in interstate commerce, as aforesaid, has been and is now receiving and accepting brokerage fees, or allowances and discounts in lieu thereof, in substantial amounts from numerous sellers of such commodities.

CONCLUSION

The receipt and acceptance by the respondent of brokerage fees, or allowances and discounts in lieu thereof, as set forth above, 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 amended answer of respondent 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 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, Harry Duvall Childers, individually, and trading as H. D. Childers Co., or trading under any other name, and his 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 him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Complaint

IN THE MATTER OF

NORMAN WEBB HUTCHINGS, DOING BUSINESS AS
HUTCHINGS BROKERAGE COMPANY

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 5059. Complaint, Oct. 8, 1943—Decision, Dec. 5, 1944

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

Received and accepted, directly or indirectly, in connection with the purchase in his own behalf and for his own account, for resale, of such merchandise in interstate commerce as aforesaid, from numerous sellers, brokerage fees or commissions, or allowances and discounts in lieu thereof, in substantial amounts:

Held, That such receipt and acceptance by him of brokerage fees, or commissions, or allowances and discounts in lieu thereof, on purchases made for his own account, 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 parties 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, Norman Webb Hutchings, is an individual, doing business under the name and style of Hutchings Brokerage Co., having his principal office, warehouse and place of business located at 120 North Water Street, Mobile, Ala., and having a branch office and warehouse at Dothan, Ala.

The respondent is engaged in the purchase, sale and distribution of food products, canned goods and miscellaneous merchandise.

PAR. 2. The respondent is now, and for many years last past has been, engaged in business principally as a jobber buying in the name of Hutchings Brokerage Co., for his 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 his said business as a jobber purchases a substantial portion of his requirements of food products, canned goods and miscellaneous merchandise from sellers located in States other than the State in which respondent is located. Pursuant to