

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

said purchases and respondent's 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 goods and miscellaneous merchandise in interstate commerce in his own behalf and for his own account for resale from numerous sellers located in States other than the State where the respondent is located, has been and is now receiving and accepting, directly or indirectly, from numerous sellers of said food products, canned goods and miscellaneous merchandise, commissions or brokerage fees or allowances and discounts in lieu of brokerage in substantial amounts.

PAR. 5. The receipt and acceptance by the respondent of commissions or brokerage fees, or allowances and discounts in lieu of brokerage, by respondent on interstate purchases of various food products, canned goods, and miscellaneous merchandise, for his own account, 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 October 8, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Norman Webb Hutchings, doing business as Hutchings Brokerage 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, Norman Webb Hutchings, is an individual, doing business under the name and style of Hutchings Brokerage Co., with 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.

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 Company, for his own account, various food products and other merchandise, and reselling such merchandise.

PAR. 2. Respondent in the course and conduct of his business as a jobber 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 such purchases and respondent's instructions in connection therewith, 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 behalf 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, directly or indirectly, from numerous sellers of such food products and other merchandise, brokerage fees or commissions, or allowances and discounts in lieu thereof, in substantial amounts.

CONCLUSION

The receipt and acceptance by the respondent of brokerage fees or commissions, or allowances and discounts in lieu thereof, on purchases made for his own account, 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, Norman Webb Hutchings, individually, and trading as Hutchings Brokerage 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.

IN THE MATTER OF
HASTINGS MANUFACTURING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 2 (a) OF AN ACT OF
CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19,
1936

Docket 4437. Complaint, Dec. 27, 1940—Decision, Dec. 9, 1944

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of piston rings and other replacement parts for use in motor vehicles, to and through some six hundred jobbers, who distributed them to garages, service stations and others engaged in the repair and servicing of such vehicles; with a relative position in the industry in terms of volume of sales in the replacement trade originally apparently not better than sixth or seventh;

Following the introduction of its "steel vent" or new type of steel oil ring, and the inauguration of an aggressive campaign to acquire new and, as far as possible, exclusive channels of distribution; in pursuance of a general policy directed toward persuading jobbers to discontinue handling other lines of piston rings and to handle its rings exclusively; and as an inducement to jobbers to take on its line and handle it exclusively or at least to substitute it for one or more of the lines then handled and give it preferential treatment, used singly or in combination as required, the three principal methods below set out, supplementing them when necessary in other ways, such as granting a large jobbing account, override on the purchases of smaller jobbers in the same trading area, granting extra discounts and even in one instance the purchase of an automobile trailer from a jobber—

- (a) Purchased from distributors or prospective distributors of its said products competitive rings owned by the particular distributor or recalled by him from his customers, and even in a few instances rings purchased by said jobber at its suggestion to get the benefit of a credit balance with the particular competitor, on the understanding, usually either that its lines would be handled exclusively, or that its rings would receive preferential sales effort and constitute the number one ring line handled by the jobber; and in making such purchases regularly paid to the jobber in credit, its own rings, or cash, the actual cost to him of his "overage"—i.e. rings purchased by him as distinguished from consigned stock, which was returned to the competitor—regardless of age, condition or actual value; removed competitive rings thus acquired as soon as they could be replaced with its own or, sometimes, after a grace period during which the jobbers' salesmen and its own "missionary" men could convert the jobbers' customers to the use of its own rings; and as a matter of general policy destroyed such competitive rings and did not return them in any way to the channels of trade;
- (b) Made loans to jobbers from time to time with a view to inducing the recipients to become or continue to be exclusively its distributors or to concentrate their efforts on its line, and in some cases for jobbers' use in opening branches to handle its rings exclusively; and
- (c) Guaranteed to various jobbers from time to time that if they undertook the distribution of its rings their gross profit thereon during the year would be some specified percentage, usually 50%, greater than their gross profits from sales of competitive rings during the past year;