

IN THE MATTER OF
COAST FISHING COMPANY

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 APPROVED JUNE 19, 1936

Docket 5197. Complaint, July 27, 1944—Decision, Mar. 26, 1945

Where a corporation engaged in the packing and interstate sale and distribution of canned tuna, sardines, mackerel and other sea food products to buyers including those who—designating themselves as “brokers,” “merchandise brokers” or “speculative brokers”—customarily placed orders only with those sellers who would grant and pay them commissions or brokerage fees on their own purchases, some of whom distributed them under their own private brands, and who, masking their buying operations under the aforesaid fictional designations to collect commissions or brokerage fees from said corporation and other sellers, invoiced and sold in their own names for their own accounts at their own prices and on their own terms, and assumed full and complete credit risks—

Paid and granted commissions or brokerage fees to buyers of its sea food products on their own purchases, as above illustrated:

Held, That such payments were in violation of subsec. (c) of sec. 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mitchell, Silberberg & Knupp, of Los Angeles, Calif., 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, Coast Fishing Company, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 621 S. Fries Avenue, Wilmington, Calif.

PAR. 2. Respondent, Coast Fishing Company, is now engaged and for many years prior hereto, has engaged in the business of packing, distributing, and selling canned tuna, canned sardines and canned mackerel and other sea food products (all of which are hereinafter called sea food products) in its own name and for its own account for resale directly to buyers located in States other than the State in which the respondent is established. As a result of respondent's instructions, such sea food 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 sea food products from the sea food products sold by competitors, and to facilitate sales, utilizes registered and

unregistered trade-marks and brands for the various types and grades of sea food products it sells. Among and representative of respondent's well-known brands are:

Coast, Treasure, Abbey Biltmore, Satisfaction, Wave Kissed, King Solomon, Lucky Strike, Flakies.

PAR. 3. The respondent, since June 19, 1936, in connection with the interstate sale and distribution of sea food 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 sea food 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 sea food 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 illustrated, is representative of the sales methods of a number of West Coast distributors.

The respondent's buyers 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 sea food 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 sea food 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 to 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 operations under the fictionalized designation of "brokers," "merchandise brokers," or "primary distributors," for the sole purpose of coloring the name and method of their operation 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 sea food 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 July 27, 1944, issued and subsequently served its complaint in this proceeding upon the 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 in due course filed its answer admitting all material allegations of fact set forth in said complaint but stating that the acts and practices complained of were discontinued prior to the issuance of said complaint. Thereafter, respondent waived further hearing as to the facts, the filing of briefs, and oral argument. Thereupon, this matter 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. Respondent, Coast Fishing Company, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 621 South Fries Avenue, Wilmington, Calif.

PAR. 2. Respondent, Coast Fishing Company is now, and for many years last past has been, engaged in the packing, sale, and distribution of canned tuna, canned sardines, canned mackerel, and other sea food products (all of which are hereinafter frequently referred to as sea food products). Pursuant to sales made, respondent causes its products to be transported from its place of business to the purchasers at their various points of location in States other than the State in which the shipment originated, and maintains, and has maintained, a course of trade in such products in commerce, as "commerce" is defined in the said Clayton Act as amended.

PAR. 3. Since June 19, 1936, respondent has sold and distributed sea food products directly to certain buyers in commerce as aforesaid, and has paid to such buyers commissions or brokerage fees on the purchases made by them in their respective names and for their respective accounts. Some of the buyers who purchased sea food products from respondent designate themselves as "brokers," "merchandise brokers," or "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 of such buyers are large-scale buyers and sellers of sea food products which they distribute 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 of the "buying brokers" or "speculative brokers" customarily purchase their private-brand sea food products from respondent and from other sellers, and often during a given season, after shopping the market, will purchase such commodities under their same private brands from several competing sellers, placing their orders where they are able to secure the most favorable prices and terms. Respondent has sold its sea food products to some of such purchasers under the buyer's private label although it has its own trade-marks and brands which it customarily places on its products to identify and distinguish them from the products of others.

PAR. 4. Some "buying brokers" or "speculative brokers" place their orders for merchandise with respondent and other sellers, who, on receiving and accepting such orders, deliver the merchandise to a common carrier but require that the buyer pay the purchase price as a condition precedent to 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 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 fictional designation of "brokers," "merchandise brokers," or "primary distributors" for the sole purpose of coloring their method of operation in order to collect commissions or brokerage fees from respondent and from other sellers who will pay commissions or brokerage fees on such buyer's 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.

CONCLUSION

The aforesaid acts and practices of respondent in paying and granting commissions or brokerage fees to buyers of its sea food products on their own purchases of said commodities, as hereinbefore illustrated, constitute violations by said respondent of the provisions and 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, the answer of respondent admitting the material allegations of fact set forth in said complaint, and a waiver of 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 "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15,

Order

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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 respondent, Coast Fishing Company, a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale and distribution of sea food products or other merchandise in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof to any purchaser upon purchases for his own account, or to any agent, representative, or other intermediary acting in fact for or in behalf of or subject to the direct or indirect control of the purchaser to whom sale is made.

It is further ordered, That 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.

Complaint

IN THE MATTER OF
LONDON HANDKERCHIEF COMPANY, INC. AND
HARRY STEINBERG

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5212. Complaint, Sept. 2, 1944—Decision, Mar. 26, 1945

Where a corporation and its president and principal stockholder, engaged in the interstate sale and distribution to wholesalers and retailers of handkerchiefs, which were seconds, rejects or irregulars of inferior quality, badly cut and imperfectly sewed and of a retail value considerably less than the price charged therefor—

- (a) Sold said handkerchiefs so packed in a sealed carton bearing the legends "Send a Hank to a Yank" and "Serving those who Serve," that they were not visible to purchasers and no opportunity was afforded to observe their quality; and
- (b) Represented thereby, and through furnishing to dealers display posters bearing the legend: "Hanks for Yanks," "6 large cotton handkerchiefs packaged, ready for mailing, no wrapping no stamp necessary" and a depiction of the package, and through advertisements in trade journals in effect so stating, that said handkerchiefs were of good quality, well made and long wearing and comparable to others usually sold at the same or similar price;

With the effect of misleading dealers and members of the purchasing public, with the result that such members, and especially relatives and friends of the armed services purchased said products, and with the effect of thereby placing in the hands of dealers and retailers means of misleading and deceiving such members, and with tendency and capacity to cause them to purchase substantial quantities of said products:

Held, That said acts and practices, under the circumstances above set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. J. W. Brookfield, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that London Handkerchief, Inc., a corporation, and Harry Steinberg, an individual, and the president of London Handkerchief Company, Inc., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, London Handkerchief Company, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 9 East 38th Street in the city of New York, N. Y.

Respondent, Harry Steinberg, is president and principal stock holder of respondent corporation, London Handkerchief Company, Inc., and formulates, controls and directs its policies and practices. Respondent, Harry