

Complaint

40 F. T. C.

IN THE MATTER OF

MARINE PRODUCTS 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 ACT APPROVED JUNE 19, 1936

Docket 5137. Complaint, Mar. 14, 1944—Decision, Mar. 29, 1945

Where a corporation engaged in the interstate sale and distribution of canned tuna, abalone and skip jack—

Paid and granted to buyers, some of whom incorrectly designated themselves as brokers, commissions or brokerage or compensation, allowances, or discounts in lieu thereof on purchases of its products made by such buyers on their own behalf and for their own accounts, including purchases bearing its brands and labels and purchases bearing the private brands or labels of the buyers:

Held, That said acts and practices in paying and granting such commissions or brokerage to purchasers of its products constituted violation of subsec. (c) of Sec. 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. Benjamin W. Shipman, of Los Angeles, Calif., and *Mr. Fulton Brylawski*, 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, Marine Products 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 3370 Harasthy Street, San Diego, Calif.

PAR. 2. Respondent, Marine Products Company, is now engaged and for many years prior hereto, has engaged in the business of distributing and selling canned tuna, canned abalone, and canned skip jack and other sea food products (all of which are hereinafter called sea food products) in its own name and for its own account.

The respondent sells and distributes its sea food products through two separate and distinct methods. First, through intermediaries who act as its agents in negotiating the sale of its sea food products and for which services such intermediaries customarily are paid, directly or indirectly, commissions or brokerage fees. Second, through the sale of its sea food products directly to buyers who are paid, directly or indirectly, commission or brokerage fees on their own purchases of such sea food products.

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 various sea food products it sells, which brands are generally known as packers' or sellers' brands.

The respondent also sells its sea food products unlabeled or unbranded, and also under the labels or brands of its buyers, which brands or labels are generally known to the trade as private or buyers' brands. Some of such buyers who incorrectly designate themselves as brokers also utilize registered and unregistered labels and brands, which labels and brands are utilized in selling such respective buyers' merchandise. Such buyers are primarily engaged in the purchase and sale of sea food products in their own name and for their own account.

PAR. 3. The respondent in the course and conduct of its said business, since June 19, 1936, has sold and distributed a substantial portion of its sea food products directly to buyers located in States other than the State in which the respondent is established, and as a result of said sales and the 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.

PAR. 4. The respondent, since June 19, 1936, in connection with the interstate sale and distribution of sea food products in its own name and for its own account for resale, has sold such sea food products to buyers located in the various States of the United States other than the State where respondent is established, and 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. 5. The paying and granting by respondent, directly or indirectly, of commissions, brokerage or other compensation and allowances or discounts in lieu thereof to the buyers of said sea food products, on their own purchases which are resold unlabeled or under either the buyers' or sellers' labels, and 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 14, Sec. 13) the Federal Trade Commission on March 14, 1944, issued and subsequently served its complaint in this proceeding upon Marine Products Company, a corporation, charging it 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, 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. In said answer respondent stated that the practices complained of had been discontinued. 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. Respondent, Marine Products 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 3370 Harasthy Street, San Diego, Calif. The respondent is now, and for many years last past has been, engaged in the sale and distribution of canned tuna, canned abalone, and canned skip jack (hereinafter frequently referred to as sea-food products). Respondent sells its sea-food products under its own trade marks and brands and also, by agreement with some buyers, places the private brands or labels of such buyers on the sea-food products purchased by them.

PAR. 2. In the course and conduct of its aforesaid business, pursuant to sales made, respondent transports, or causes its products to be transported, from its place of business to various purchasers at their respective points of location in States other than the State in which such shipments originated. Respondent thus maintains, and has maintained, a course of trade in said products in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended.

PAR. 3. Since July 19, 1936, respondent has, in or in connection with sales of its sea-food products in commerce as aforesaid, paid and granted to buyers, some of whom incorrectly designate themselves as brokers, commissions or brokerage or compensation, allowances, or discounts in lieu thereof on purchases of its products made by such buyers on their own behalf and for their own accounts. Such brokerage payments, or discounts in lieu thereof, have been made to buyers upon their own purchases of products bearing respondent's brands and labels as well as upon purchases of respondent's products under the private brands or labels of the buyers.

CONCLUSION

The aforesaid acts and practices of the respondent in paying and granting commissions or brokerage or compensation, allowances, or discounts in lieu thereof to purchasers of its products constitute violations 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 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).

It is ordered, That respondent, Marine Products Company, a corporation, its officers, agents, representatives, 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 commodities in commerce, as

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"commerce" is defined in the aforesaid Clayton Act as amended, 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 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.

Order

40 F. T. C.

IN THE MATTER OF
LOUIS FARBEN, TRADING AS GOLD STAR
NOVELTY HOUSE

MODIFIED ORDER TO CEASE AND DESIST

Docket 3449. Order, April 3, 1945

Modified order in proceeding in question—in which original order issued on November 15, 1940, 31 F. T. C. 1357—requiring respondent, his representatives, etc., in connection with the offer, etc., in commerce, of manicure sets, electric lamps, and other articles, to cease and desist from using lottery schemes in merchandising, from using terms “without cost,” etc., to refer to articles offered as compensation for distribution of his products, and from representing his business as registered under the laws of the United States, as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (respondent having filed no answer thereto), testimony and other evidence taken before Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no proof in opposition thereto), brief filed herein by counsel for the Commission (respondent not having filed brief and oral argument having been waived); and the Commission having duly made and issued its findings as to the facts, conclusion, and order to cease and desist dated November 15, 1940; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondent to show cause on March 13, 1945, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, issues this its modified order to cease and desist.

It is ordered, That the respondent, Louis Farben, individually, and trading as Gold Star Novelty House, his representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of manicure sets, electric lamps, leather wallets, pictures, silverware and chinaware, cosmetics, jewelry, comb and brush sets, razor blades or any other articles of merchandise in commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards, or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

2. Shipping, mailing, or transporting to agents or to distributors, or to members of the public push or pull cards, punchboards or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.