

Complaint

IN THE MATTER OF
JASPER W. EFIRD, ET AL.

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 OF JUNE 19, 1936

Docket 3955. Complaint, Nov. 21, 1939—Decision, Apr. 14, 1945

Where an individual who (1) together with his four (later—three) brothers or their immediate families, controlled 38 corporations engaged in the operation as a family enterprise of retail department stores in North and South Carolina and Virginia and acted as vice president, director and buyer thereof; (2) received substantial amounts in salary and dividends therefrom; (3) made use of a New York office maintained in his name for the receipt and execution of orders transmitted to him for or by said corporate units, approving or negotiating orders placed by managers and buyers of different units, subject to his approval, on occasional trips to said city, and making some purchases directly for said units without requisition; (4) listed on the stationery employed by him in such purchasing said various businesses and their locations, and was in turn listed on their order blanks and stationery as their New York office, and so listed himself in various circulars and instructions sent to them; (5) exacted discounts or allowances in lieu thereof when able in negotiating with manufacturers and sellers for the most favorable prices on such purchases, shipments of which were as a rule made directly to the particular store involved; and (6) made use of funds thus received in paying the expenses of said office—

- (a) Received, while thus acting in his capacity as an officer of said corporate units and in their behalf, commissions and payments and allowances in lieu thereof from manufacturers and sellers of merchandise purchased for or in behalf of said units and used for their sole benefit in maintaining said buying office for them; and,

Where said corporate units—

- (b) Received as aforesaid such commissions and allowances in lieu thereof upon purchases made for them, and, in some instances in which said individual was successful in beating down a price of a manufacturer or seller to the point where the commissions which otherwise would have been paid were not permitted by the price allowed, but, instead, were included in the discounts allowed on the transaction, benefitted directly:

Held, That in receiving and accepting brokerage fees or commissions, or allowances and discounts in lieu thereof, from manufacturers and sellers upon purchases of merchandise as hereinabove found, said individual and corporations violated the provisions of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before Mr. John P. Bramhall, trial examiner.

Mr. Frank Hier for the Commission.

Guthrie, Pierce & Blakeney, of Charlotte, N. C., for respondents.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties named in the caption hereof and hereinafter more particularly designated

and described, have since June 19, 1936, violated and are violating the provisions of subsection (c), 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, Jasper W. Efird, is an individual, maintaining an office at 200 West 34th Street, New York City, N. Y., under the name of J. W. Efird, Efird Department Stores.

PAR. 2. Respondent, Charlotte Mercantile Company, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 111 College Street, Charlotte, N. C., and is engaged in the business of operating one or more retail department stores located in North and South Carolina.

Respondent, Efird's Department Store of Charlotte, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 111 College Street, Charlotte, N. C., and is engaged in the business of operating one or more retail department stores in the States of North Carolina, South Carolina and Virginia.

Respondent, Efird's Department Store of Wilmington, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 222 North Front Street, Wilmington, N. C., and is engaged in the business of operating a retail department store in Wilmington, N. C.

Respondent, Efird's Department Store of Raleigh, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 208 Fayetteville Avenue, Raleigh, N. C., and is engaged in the business of operating a retail department store in Raleigh, N. C.

Respondent, Efird's Department Store, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 131 West 4th Street, Winston Salem, N. C., and is engaged in the business of operating a retail department store in Winston Salem, N. C.

Respondent, Efird's Department Store of Salisbury, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 226 South Main Street, Salisbury, N. C., and is engaged in the business of operating a retail department store in Salisbury, N. C.

Respondent, The Efird Mercantile Co., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 307 West Main Street, Durham, N. C., and is engaged in the business of operating a retail department store in Durham, N. C.

Respondent, Efird's Dept. Store of High Point, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 142 South Main Street, High Point, N. C., and is engaged in the business of operating a retail department store in High Point, N. C.

Respondent, Efird Co., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 146 West Main Street, Gastonia, N. C., and is engaged in the business of operating a retail department store in Gastonia, N. C.

Respondent, Efird's Department Store of Lumberton, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Lumberton, N. C., and is engaged in the business of operating a retail department store in Lumberton, N. C.

Respondent, Efird-Davis Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 212 South Main Street, Rocky Mount, N. C., and is engaged in the business of operating a retail department store in Rocky Mount, N. C.

Respondent, Efird's Dept. Store of Goldsboro, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at West Walnut Street, Goldsboro, N. C., and is engaged in the business of operating a retail department store in Goldsboro, N. C.

Respondent, Efird's Department Store of Monroe, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Main and Jefferson Streets, Monroe, N. C., and is engaged in the business of operating a retail department store in Monroe, N. C.

Respondent, Efird's Department Store of Lexington, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Lexington, N. C., and is engaged in the business of operating a retail department store in Lexington, N. C.

Respondent, Efird's Department Store of Burlington, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at First Floor, East Davis Street, Burlington, N. C., and is engaged in the business of operating a retail department store in Burlington, N. C.

Respondent, Efird's Department Store of Wilson, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 229-231 East Nash Street, Wilson, N. C., and is engaged in the business of operating a retail department store in Wilson, N. C.

Respondent, Efird's Department Store of Shelby, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Shelby, N. C., and is engaged in the business of operating a retail department store in Shelby, N. C.

Respondent, Efird's Department Store of Statesville, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 104 South Center Street, Statesville, N. C., and is engaged in the business of operating a retail department store in Statesville, N. C.

Respondent, Forest City Mercantile Co., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 4 East Main Street, Forest City, N. C., and is engaged in the business of operating a retail department store in Forest City, N. C.

Respondent, John E. Efird and Sons, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 145-49 West

Main Street, Albemarle, N. C., and is engaged in the business of operating a retail department store in Albemarle, N. C.

Respondent, Efird's Department Store of Lenoir, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 119 West Avenue, Lenoir, N. C., and is engaged in the business of operating a retail department store in Lenoir, N. C.

Respondent, Efird's Department Store of Laurinburg, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Laurinburg, N. C., and is engaged in the business of operating a retail department store in Laurinburg, N. C.

Respondent, Efird's Department Store of Lincolnton, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at East Main Street, Lincolnton, N. C., and is engaged in the business of operating a retail department store in Lincolnton, N. C.

Respondent, Efird's Department Store of Greensboro, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 230 South Elm Street, Greensboro, N. C., and is engaged in the business of operating a retail department store in Greensboro, N. C.

Respondent, Efird's Department Store of Kannapolis, N. C., Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Kannapolis, N. C., and is engaged in the business of operating a retail department store in Kannapolis, N. C.

Respondent, Efird's Department Store of Hickory, Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Hickory, N. C., and is engaged in the business of operating a retail department store in Hickory, N. C.

Respondent, Efird's Department Store of Kinston, N. C., Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 113 North Queen Street, Kinston, N. C., and is engaged in the business of operating a retail department store in Kinston, N. C.

Respondent, Efird's Department Store of Greenville, N. C., Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 430 Evans Street, Greenville, N. C., and is engaged in the business of operating a retail department store in Greenville, N. C.

Respondent, Efird Bros. Company of Columbia, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 1601 Main Street, Columbia, S. C., and is engaged in the business of operating a retail department store in Columbia, S. C.

Respondent, Efird's Department Store of Anderson, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 104 South Main Street, Anderson, S. C., and is engaged in the business of operating a retail department store in Anderson, S. C.

Respondent, Efird's Department Store of Greenville, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the

State of South Carolina, with its principal office and place of business located at 14 South Main Street, Greenville, S. C., and is engaged in the business of operating a retail department store in Greenville, S. C.

Respondent, Efird's Department Store of Spartanburg, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 129 East Main Street, Spartanburg, S. C., and is engaged in the business of operating a retail department store in Spartanburg, S. C.

Respondent, Efird's Department Store of Greenwood, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at Main Street, Greenwood, S. C., and is engaged in the business of operating a retail department store in Greenwood, S. C.

Respondent, Efird's Department Store of Rock Hill, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 116-118 East Main Street, Rock Hill, S. C., and is engaged in the business of operating a retail department store in Rock Hill, S. C.

Respondent, Efird's Department Store of Sumter, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 102 South Main Street, Sumter, S. C., and is engaged in the business of operating a retail department store in Sumter, S. C.

Respondent, Efird's Department Store of Greer, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 33 Trade Street, Greer, S. C., and is engaged in the business of operating a retail department store in Greer, S. C.

Respondent, Efird Bros. Company of Chester, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 169 Gadsden Street, Chester, S. C., and is engaged in the business of operating a retail department store in Chester, S. C.

Respondent, Efird's Department Store of Danville, Virginia, Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business at 411 Main Street, Danville, Va., and is engaged in the business of operating a retail department store in the City of Danville, Va.

All of the above corporate respondents purchase their merchandise requirements in interstate commerce as hereinafter more particularly set out.

All of said corporate respondents herein named and described will hereinafter be referred to as buyer respondents.

PAR. 3. Respondent, Jasper W. Efird, is a stockholder and a director in all of said buyer respondent corporations. He is employed by each of them as vice president to act in the capacity of buyer or purchasing agent for them. Said purchasing services are rendered by said respondent, Jasper W. Efird, from the office located at 200 West 34th Street, New York City, N. Y., which office is listed as J. W. Efird, Efird Department Stores, and which office is held out to the public as the buying office of the said buyer respondents. Orders for merchandise to be purchased and shipped to them are sent by said buyer respondents to respondent, Jasper W. Efird, at said office and all of the requirements of each of said buyer respondents

are thus purchased by or through said respondent, Jasper W. Efird, or only after his approval first had and obtained. Merchandise so ordered is bought by respondent, Jasper W. Efird, from various sellers and is then shipped by the various sellers thereof from New York City, N. Y., and elsewhere, into and through the various States of the United States to said buyer respondents located as hereinabove set out in the States of North Carolina, South Carolina and Virginia.

PAR. 4. In the course and conduct of the purchasing transactions above outlined, sellers of merchandise have since June 19, 1936, transmitted, paid and delivered and do transmit, pay and deliver to said respondent, Jasper W. Efird, brokerage fees or commissions, the same being a percentage of the sales prices agreed upon between each of the various sellers and the buyer respondents through their agent, officer and employee, respondent, Jasper W. Efird, and said sellers have likewise transmitted, paid and delivered and do transmit, pay and deliver to said respondent, Jasper W. Efird, payments or allowances in lieu of brokerage and said respondent, Jasper W. Efird, has since June 19, 1936, received and accepted and is receiving and accepting such brokerage fees and commissions and also payments and allowances in lieu thereof upon purchases of merchandise made through him by said buyer respondents.

PAR. 5. In all of the purchasing transactions hereinabove described, said respondent, Jasper W. Efird, has been and is subject to the direct control and has been and is acting in fact for and in behalf of said buyer respondents.

PAR. 6. In all of the purchasing transactions hereinabove described in connection with which the said brokerage fees and commissions and payments and allowances in lieu thereof have been and are being paid and transmitted by said sellers and have been and are being accepted and received by said respondent, Jasper W. Efird, no services whatsoever in connection with said purchases have been rendered or are now being rendered to, for or on behalf of any of said sellers by said respondent, Jasper W. Efird.

PAR. 7. The said brokerage fees or commissions and payments and allowances in lieu thereof so received and accepted by respondent, Jasper W. Efird, as hereinabove described, have been used and expended by him as an officer and employee of said buyer respondents in the payment of rent, salaries, wages, traveling expenses and other maintenance costs of said buyer respondents' New York City office at 200 West 34th Street, and for other similar purposes solely for the benefit of said buyer respondents.

PAR. 8. The transmission and payment of said brokerage fees or commissions and the payments and allowances in lieu thereof by the said sellers to and the receipt and acceptance thereof by respondent, Jasper W. Efird, and said buyer respondents in the manner and under the circumstances hereinabove set forth, is in violation of the provisions of section 2 (c) of the above-mentioned 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 act of Congress entitled "An act to amend section 2 of an act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13) and for other purposes," approved June 19, 1936 (the Robinson-Patman Act).

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 (Clayton Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission on November 21, 1939, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violating the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report and supplemental report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of and in opposition to the complaint, and oral argument of counsel; 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. Respondent, Jasper W. Efird, is an individual, maintaining an office at 200 West 34th Street, New York, N. Y., under the name of J. W. Efird, Efird Department Stores.

PAR. 2. Respondent, Charlotte Mercantile Company, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 111 College Street, Charlotte, N. C., and is engaged in the business of operating one or more retail department stores located in North and South Carolina and is also engaged in selling merchandise at wholesale chiefly to the Efird stores..

Respondent, Efird's Department Store of Charlotte, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 111 College Street, Charlotte, N. C., and is engaged in the business of operating one or more retail department stores in the States of North Carolina, South Carolina, and Virginia.

Respondent, Efird's Department Store of Wilmington, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 222 North Front Street, Wilmington, N. C., and is engaged in the business of operating a retail department store in Wilmington, N. C.

Respondent, Efird's Department Store of Raleigh, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 208 Fayetteville Avenue, Raleigh, N. C., and is engaged in the business of operating a retail department store in Raleigh, N. C.

Respondent, Efird's Department Store, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 131 West 4th Street, Winston Salem, N. C., and is engaged in the business of operating a retail department store in Winston Salem, N. C.

Respondent, Efird's Department Store of Salisbury, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 226 South Main Street, Salisbury, N. C., and is engaged in the business of operating a retail department store in Salisbury, N. C.

Respondent, The Efird Mercantile Co., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 307 West Main Street, Durham, N. C., and is engaged in the business of operating a retail department store in Durham, N. C.

Respondent, Efird's Dept. Store of High Point, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 142 South Main Street, High Point, N. C., and is engaged in the business of operating a retail department store in High Point, N. C.

Respondent, Efird Co. is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 146 West Main Street, Gastonia, N. C., and is engaged in the business of operating a retail department store in Gastonia, N. C.

Respondent, Efird's Department Store of Lumberton, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Lumberton, N. C., and is engaged in the business of operating a retail department store in Lumberton, N. C.

Respondent, Efird-Davis Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 212 South Main Street, Rocky Mount, N. C., and is engaged in the business of operating a retail department store in Rocky Mount, N. C.

Respondent, Efird's Dept. Store of Goldsboro, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at West Walnut Street, Goldsboro, N. C., and is engaged in the business of operating a retail department store in Goldsboro, N. C.

Respondent, Efird's Department Store of Monroe, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Main and Jefferson Streets, Monroe, N. C., and is engaged in the business of operating a retail department store in Monroe, N. C.

Respondent, Efird's Department Store of Lexington, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Lexington, N. C., and is engaged in the business of operating a retail department store in Lexington, N. C.

Respondent, Efird's Department Store of Burlington, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business

located at First Floor, East Davis Street, Burlington, N. C., and is engaged in the business of operating a retail department store in Burlington, N. C.

Respondent, Efird's Department Store of Wilson, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 229-231 East Nash Street, Wilson, N. C., and is engaged in the business of operating a retail department store in Wilson, N. C.

Respondent, Efird's Department Store of Shelby, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Shelby, N. C., and is engaged in the business of operating a retail department store in Shelby, N. C.

Respondent, Efird's Department Store of Statesville, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 104 South Center Street, Statesville, N. C., and is engaged in the business of operating a retail department store in Statesville, N. C.

Respondent, Forest City Mercantile Co., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 4 East Main Street, Forest City, N. C., and is engaged in the business of operating a retail department store in Forest City, N. C.

Respondent, John E. Efird and Sons, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 145-49 West Main Street, Albemarle, N. C., and is engaged in the business of operating a retail department store in Albemarle, N. C.

Respondent, Efird's Department Store of Lenoir, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 119 West Avenue, Lenoir, N. C., and is engaged in the business of operating a retail department store in Lenoir, N. C.

Respondent, Efird's Department Store of Laurinburg, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Laurinburg, N. C., and is engaged in the business of operating a retail department store in Laurinburg, N. C.

Respondent, Efird's Department Store of Lincolnton, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at East Main Street, Lincolnton, N. C., and is engaged in the business of operating a retail department store in Lincolnton, N. C.

Respondent, Efird's Department Store of Greensboro, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 230 South Elm Street, Greensboro, N. C., and is engaged in the business of operating a retail department store in Greensboro, N. C.

Respondent, Efird's Department Store of Kannapolis, N. C., Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Kannapolis, N. C., and is engaged in the business of operating a retail department store in Kannapolis, N. C.

Respondent, Efird's Department Store of Hickory, Incorporated, is a corporation, organized and existing under and by virtue of the laws of the

State of North Carolina, with its principal office and place of business located at Hickory, N. C., and is engaged in the business of operating a retail department store in Hickory, N. C.

Respondent, Efird's Department Store of Kinston, N. C., Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 113 North Queen Street, Kinston, N. C., and is engaged in the business of operating a retail department store in Kinston, N. C.

Respondent, Efird's Department Store of Greenville, N. C., Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 430 Evans Street, Greenville, N. C., and is engaged in the business of operating a retail department store in Greenville, N. C.

Respondent, Efird Bros. Company of Columbia, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 1601 Main Street, Columbia, S. C., and is engaged in the business of operating a retail department store in Columbia, S. C.

Respondent, Efird's Department Store of Anderson, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 104 South Main Street, Anderson, S. C., and is engaged in the business of operating a retail department store in Anderson, S. C.

Respondent, Efird's Department Store of Greenville, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 14 South Main Street, Greenville, S. C., and is engaged in the business of operating a retail department store in Greenville, S. C.

Respondent, Efird's Department Store of Spartanburg, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 129 East Main Street, Spartanburg, S. C., and is engaged in the business of operating a retail department store in Spartanburg, S. C.

Respondent, Efird's Department Store of Greenwood, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at Main Street, Greenwood, S. C., and is engaged in the business of operating a retail department store in Greenwood, S. C.

Respondent, Efird's Department Store of Rock Hill, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 116-118 East Main Street, Rock Hill, S. C., and is engaged in the business of operating a retail department store in Rock Hill, S. C.

Respondent, Efird's Department Store of Sumter, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 102 South Main Street, Sumter, S. C., and is engaged in the business of operating a retail department store in Sumter, S. C.

Respondent, Efird's Department Store of Greer, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 33 Trade Street, Greer, S. C., and is engaged in the business of operating a retail department store in Greer, S. C.

Respondent, Efird Bros. Company of Chester, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 169 Gadsden Street, Chester, S. C., and is engaged in the business of operating a retail department store in Chester, South Carolina.

Respondent, Efird's Department Store of Danville, Virginia, Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business at 411 Main Street, Danville, Va., and is engaged in the business of operating a retail department store in the city of Danville, Va.

All of the above respondent corporations purchase their merchandise requirements in interstate commerce as hereinafter more particularly set out.

All of the respondent corporations herein named and described will hereinafter be referred to as "corporate respondents."

PAR. 3. The active management and control of all of the corporate respondents were exercised and maintained by the respondent, Jasper W. Efird, and his four brothers, Joseph B. Efird, Paul H. Efird, Edward L. Efird, and John Ray Efird, until the death of John Ray Efird in 1938, and since that time by the four surviving Efird brothers. Said brothers or their immediate families own from 80 to 100 percent of all the capital stock of each of the various corporate respondents, but no one of said Efird brothers alone controls any of the corporate respondents. In general, the corporate respondents, in spite of separate corporate identities, constitutes a family enterprise operated for, and by, the Efird family.

Joseph B. Efird is president of each corporate respondent, except Efird's Department Store of Charlotte, N. C., Inc., of which he is vice president. Paul H. Efird is vice president of each corporate respondent except Efird's Department Store of Charlotte, N. C., Inc., of which he is president. Edward L. Efird is secretary and treasurer, and respondent, Jasper W. Efird is vice president, of each of said corporate respondents.

The Efird brothers, at a meeting held each year, determine the salary of each of the officers for the ensuing year and the particular corporate respondents to which each officer's salary shall be charged and in what amounts, based in part upon their ability to pay. When the financial condition of any corporate respondent will not warrant a charge for salaries, no such charge is made.

With the exception of respondent, Jasper W. Efird, the Efird brothers devote most of their time to certain stores in the larger cities and periodically visit all the Efird stores and exercise and maintain a continuous and close supervision over all of them.

PAR. 4. Respondent, Jasper W. Efird, for the past several years has been paid an annual salary of \$9,840 as vice president of the various corporate respondents, which salary was charged in multiples of \$240 to 26 of the 38 corporate respondents. In addition, said respondent received dividends on the shares of capital stock owned by him in the various corporate respondents, amounting to \$4,145 in 1936, \$3,101 in 1937, \$6,285 in 1938, \$6,815 in 1939, and \$4,255 in 1940.

In addition to periodic visits to the various corporate respondents and the maintenance of continuous and close supervision over them in much the same manner as his brothers, respondent, Jasper W. Efird, acted as buyer or purchasing agent for all of the corporate respondents and maintained an office for this purpose in New York City.

PAR. 5. When any of the corporate respondents require merchandise which is to be purchased on the open market, they send orders or requisitions for such merchandise either direct to respondent, Jasper W. Efird, or to Joseph B. Efird, who in some instances approves said orders and forwards them to respondent, Jasper W. Efird, for purchase in the open market. In some instances the store managers of the corporate respondents purchase some merchandise from salesmen calling at their respective stores. No merchandise can be bought in this manner without the approval of either Joseph B. Efird or respondent, Jasper W. Efird. Store managers or buyers of the corporate respondents from time to time make trips to New York for the purpose of purchasing merchandise for their respective stores. In such instances the respondent, Jasper W. Efird, supplies them with a list of manufacturers or sellers, or otherwise assists them. It is the general practice that all orders placed on such trips are submitted to the respondent, Jasper W. Efird, for his approval and further negotiation where necessary. Respondent, Jasper W. Efird, makes purchases on requisitions or orders forwarded to him by the various corporate respondents or by Joseph B. Efird and sometimes makes purchases for the various corporate respondents without such requisitions or orders, based upon his judgment or information received from various of the corporate respondents as to their requirements.

PAR. 6. In his capacity as purchasing agent, respondent, Jasper W. Efird, purchased a substantial part of the merchandise, such as ladies' underwear, gloves, dresses, coats, children's wear, knitwear, corsets, handbags, hats, pajamas, housecoats, and other articles of merchandise, sold to the consuming public by the corporate respondents. When orders for such merchandise were placed with the manufacturers or sellers thereof by the respondent, Jasper W. Efird, the merchandise so purchased was shipped by such manufacturers or sellers, usually from their respective places of business in the State of New York, direct to the particular corporate respondents, located in the States of North Carolina, South Carolina, or Virginia, for which the merchandise was purchased.

PAR. 7. In carrying on his purchasing activities for, and on behalf of, the corporate respondents, respondent, Jasper W. Efird, maintained an office at 200 West 34th Street, New York City. Only his name appears on the door of such office and in the telephone directory, but the building directory, until after issuance of the complaint herein, listed this office as "J. W. Efird, Efird Department Stores." On the stationery used by all the corporate respondents appear all the cities in which the Efird stores are located and also the statements "General Offices Charlotte, N. C." and "New York Office: 200 West 34th Street." The uniform purchase order blank used for all purchases by all the corporate respondents likewise has printed upon it "New York Office, J. W. Efird, 200 W. 34th St." Various mimeographed news letters and instructions sent out to the corporate respondents by the respondent, Jasper W. Efird, are signed "J. W. Efird New York Office." The stationery used by the respondent, Jasper W. Efird, in transacting his business lists at the bottom thereof all of the Efird stores and the cities where located.

PAR. 8. In conducting the business from the New York office, respondent, Jasper W. Efird, estimates that about one-third of his time is spent in buying and selling securities on the stock market for his personal account. The remainder of his time is spent on the business of the corporate respondents and in visiting and interviewing manufacturers and sellers of

merchandise. Respondent, Jasper W. Efird, represents only the corporate respondents and does no buying for, or in behalf of, any other concern. All transactions with manufacturers and sellers were for the purpose of locating or obtaining merchandise for the corporate respondents in his capacity of buyer or purchasing agent.

PAR. 9. In the course of his purchasing transactions hereinbefore described and while acting for, and in behalf of, the corporate respondents, the respondent, Jasper W. Efird, has continually and consistently, since June 19, 1936, received and accepted commissions, fees, allowances, brokerage, and occasional lump payments from sellers and manufacturers, based upon the amount of purchases made by him. The commissions, brokerage, and other compensation paid to the respondent, Jasper W. Efird, by manufacturers and sellers upon purchases made for, and in behalf of, the corporate respondents amounted to approximately \$5,000 annually.

The payments so received by the respondent, Jasper W. Efird, were deposited in his personal account, together with salaries and dividends received from the corporate respondents, and were used by him to pay the expenses of the New York office of the Efird stores. No charge was made by the respondent, Jasper W. Efird, to the respondent corporations for traveling expenses incurred by him or for the expenses of the New York office, which, including rent, telephone, clerk hire, stationery, and postage, ranged from \$5,000 to \$7,000 a year.

From time to time respondent, Jasper W. Efird, made suggestions to manufacturers and sellers who did not pay him commissions, as well as to those who did, concerning style or design of certain merchandise and suggestions as to layouts of certain swatch books for the purpose of procuring the best possible merchandise at the lowest possible price for the corporate respondents and to facilitate their selection of merchandise for resale in their respective stores.

PAR. 10. The Commission finds that the commissions, and payments and allowances in lieu thereof, paid to the respondent, Jasper W. Efird, by manufacturers and sellers of merchandise purchased for, or in behalf of, the corporate respondents were used by said Jasper W. Efird for the sole benefit of the corporate respondents to maintain a buying office in the city of New York. The Commission further finds that such payments were made to the respondent, Jasper W. Efird, while he was acting in his capacity as an officer of said corporate respondents and constituted in fact a payment to said corporate respondents. Furthermore, in some instances the corporate respondents received the direct benefits of such allowances when respondent, Jasper W. Efird, was successful in beating down a price of a manufacturer or seller to the point where the commissions which otherwise would have been paid were not permitted by the price allowed but, instead, were included in the discounts allowed by such manufacturer or seller on said transaction.

CONCLUSION

In receiving and accepting brokerage fees or commissions, or allowances and discounts in lieu thereof, from manufacturers and sellers upon purchases of merchandise in the manner and under the circumstances as hereinabove found, the respondent, Jasper W. Efird, and said corporate respondents have 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).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report and supplemental report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; 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 an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by act approved June 19, 1936 (Robinson-Patman Act):

I. *It is ordered*, That the individual respondent, Jasper W. Efrd, and his agents, representatives, and employees, directly or through any corporate or other device in, or in connection with, the purchasing of ladies' underwear, gloves, dresses, coats, children's wear, knitwear, corsets, handbags, hats, pajamas, housecoats, and other articles of merchandise in commerce as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from—

1. Receiving or accepting, directly or indirectly, anything of value as brokerage, commission, or other compensation, or any allowance or discount in lieu thereof, from any seller on, or in connection with, purchases made from such seller—

(a) When such purchases are made for respondent's own account; or

(b) When such purchases are made as agent or buying representative of the purchaser; or

(c) When in making such purchases respondent is acting in fact for or in behalf of, or is subject to the direct or indirect control of, the purchaser.

II. *It is further ordered*, That the corporate respondents, Charlotte Mercantile Company; Efrd's Department Store of Charlotte, N. C., Inc.; Efrd's Department Store of Wilmington, N. C., Inc.; Efrd's Department Store of Raleigh, N. C., Inc.; Efrd's Department Store, Inc.; Efrd's Department Store of Salisbury, N. C., Inc.; The Efrd Mercantile Co.; Efrd's Dept. Store of High Point, Inc.; Efrd Co.; Efrd's Department Store of Lumberton, N. C., Inc.; Efrd-Davis Co., Inc.; Efrd's Dept. Store of Goldsboro, N. C., Inc.; Efrd's Department Store of Monroe, N. C., Inc.; Efrd's Department Store of Lexington, N. C., Inc.; Efrd's Department Store of Burlington, N. C., Inc.; Efrd's Department Store of Wilson, N. C., Inc.; Efrd's Department Store of Shelby, N. C., Inc.; Efrd's Department Store of Statesville, N. C., Inc.; Forest City Merchantile Co.; John E. Efrd and Sons, Inc.; Efrd's Department Store of Lenoir, N. C., Inc.; Efrd's Department Store of Laurinburg, Inc.; Efrd's Department Store of Lincolnton, N. C., Inc.; Efrd's Department Store of Greensboro, Inc.; Efrd's Department Store of Kannapolis, N. C., Incorporated; Efrd's Department Store of Hickory, Incorporated; Efrd's Department Store of

Kinston, N. C., Incorporated; Efird's Department Store of Greenville, N. C., Incorporated; Efird Bros. Company of Columbia, S. C., Inc.; Efird's Department Store of Anderson, S. C., Inc.; Efird's Department Store of Greenville, S. C., Inc.; Efird's Department Store of Spartanburg, S. C., Inc.; Efird's Department Store of Greenwood, S. C., Inc.; Efird's Department Store of Rock Hill, S. C., Inc.; Efird's Department Store of Sumter, S. C., Inc.; Efird's Department Store of Greer, S. C., Inc.; Efird Bros. Company of Chester, S. C., Inc.; and Efird's Department Store of Danville, Virginia, Incorporated, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device in, or in connection with, the purchasing of ladies' underwear, gloves, dresses, coats, children's wear, knitwear, corsets, handbags, hats, pajamas, housecoats, and other articles of merchandise in commerce as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from—

1. Receiving or accepting, directly or indirectly, from any manufacturer or seller of merchandise anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon purchases of merchandise made for their own account.

III. *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.

IN THE MATTER OF
MORTON SALT COMPANY

COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (A) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4319. Complaint, Sept. 18, 1940—Decision, Apr. 14, 1945

Where a corporation engaged in the production of salt and in the competitive interstate sale and distribution thereof from its various plants or warehouses to wholesalers or jobbers for resale to the retail trade; to large retail purchasers such as cooperative and corporate chain stores; and to consumers purchasing in large quantities for use in their manufacturing processes, such as meat packers, tanners and many other industries—

- (a) Discriminated in price between different purchasers buying its Blue Label, plain and iodized table salt, of like grade and quality, by selling its products to some of its customers at lower prices than it sold said products of like grade and quality to other of its customers who were competitively engaged therein in the sale of such product within the United States, through selling its said Blue Label Salt to wholesalers and retailers at the delivered price of \$1.60 per case of 24 packages when delivery was made in less than carload lots while concurrently selling said salt to other wholesaler and retailer competitors at a delivered price of \$1.50 per case when delivery was made in carload lots;
- (b) Discriminated in price, as aforesaid, through its 5000 case discount by permitting certain organizations of wholesalers and retailers—the separate wholesale and retail units of which were engaged in competition in the same trade areas with other wholesalers and retailers respectively, who did not receive said 5000 case discount, and no one of whom purchased a sufficient quantity in a twelve-month consecutive period to qualify therefor—to combine the purchases of their said units in order so to do, and thereby receive the benefit of the 10¢ per case rebated by it from its \$1.50 carload price on such annual aggregate purchases to those thus favored;
- (c) Discriminated in price, as aforesaid, through its 50,000 or more case discount, under which four retail chain store organizations, with branches and stores in various cities—no one of which purchased a sufficient amount to qualify therefor, and which were in competition with other retail customer purchasers who did not receive such rebate but purchased said salt from it at car-load price at \$1.50 or the 5000 case quantity discount—were permitted to combine the purchases of all stores and branches, and thereby enjoy such discount, under which purchasers whose purchases aggregated said amount in a twelve-month consecutive period, became entitled to a discount of 15¢ per case on such purchases; and such retail chain grocers in many cases were permitted thereby to sell said Blue Label salt to the consuming public at prices lower than those at which wholesalers could reasonably sell the same to retail customers;
- (d) Discriminated in price, as aforesaid, in connection with the sale and distribution of its table salt other than Blue Label salt, sold at list price plus freight or transportation charges from the plant nearest the customer or the plant serving the area in which the customer was located, and from which delivery was customarily made, through its “unit discount”—amounting to about 5% of the list or plant price and extended to wholesalers and retailers who were in competition in same trade area with other wholesalers and retailers who did not receive the same—under