

Complaint

IN THE MATTER OF

WASHINGTON FISH & OYSTER COMPANY, INC.

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 OF CONGRESS APPROVED JUNE 19, 1936

Docket 5228. Complaint, Oct. 3, 1944—Decision, Mar. 25, 1946

Where a corporation engaged in the packing and in the interstate sale and distribution of fresh and frozen fish, salt and smoked fish, canned salmon, and other sea food products, (1) through intermediaries who acted as its agents and to whom it paid commissions or brokerage fees for such services, and (2) by selling directly to a single large buyer which purchased in its own name and for its own account, and which, contrary to a broker, shopped the market, took title, warehoused the product, etc., and invoiced products sold at prices and terms fixed by it, masking such buying operations under the fictionalized designation of "broker," "merchandise broker," or "primary distributor" for the sole purpose of coloring the name and method of its operations in order to collect commissions or brokerage fees from said corporation and others—

Paid or granted, directly or indirectly, commissions or brokerage, or other compensation, allowances, or discounts in lieu thereof, to said direct buyer, on latter's said purchases in its own name and for its own account:

Held, That such paying and granting by said corporation directly or indirectly, of commissions or brokerage, or other compensation, allowances, or discounts in lieu thereof, to such buyers of its food products who purchased in their own names and for their own accounts for resale, were 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., and *Evans, McLaren & Lane*, of Seattle, Wash., 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 Washington Fish & Oyster Co., Inc., is a corporation, organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 4, Seattle, Wash.

PAR. 2. Respondent Washington Fish & Oyster Co., Inc., is now

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engaged and for many years prior hereto has engaged in the business of packing, buying, selling, and distributing fresh and frozen fish, salt and smoked fish, canned salmon, 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 by two separate and distinct methods. The first and principal method is by utilizing intermediaries who act as respondent's agents in negotiating the sale of its sea food products, at respondent's prices, and on respondent's terms, and for which services such intermediaries are paid commissions or brokerage fees. The second method is by selling its sea food products directly to a single large buyer, W. M. Meador & Co., to whom respondent pays, directly or indirectly, commissions or brokerage fees on such purchases of sea food products purchased by it in its own name and for its 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 said W. M. Meador & Co., which is located in Mobile, Ala., a State other than the State in which the respondent is located; and as a result of said sales and the respondent's instructions, such sea food products have been shipped and transported across State lines by respondent to said buyer.

PAR. 4. 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 W. M. Meador & Co., who purchased said sea food products in its own name and for its own account.

PAR. 5. While said W. M. Meador & Co. designates itself a "broker," it is not a broker in fact. Contrary to the manner in which a broker operates, said company purchases and resells for its own account, taking title to and assuming all risks incident to ownership. Said company pays the price of the products purchased from respondent as a condition precedent to delivery of the goods by the carrier to it. If products shipped by respondent to it are lost or damaged in transit, it files claims with the carrier and collects damages from the carrier for its own account. Upon receipt of the products from respondent, said company warehouses them in its own warehouse or in public warehouses, and insures the products in its own name against loss or damage. Subsequently said company has pledged warehouse receipts and insurance contracts covering these products as security for loans from banks. When such products are sold by

said company they are sold at prices, terms, and conditions of sale determined by said company and are invoiced in the name of said company, which assumes full and complete credit risks.

Said company masks these buying operations under the fictionalized designation of "broker," "merchandise broker," or "primary distributor," for the sole purpose of coloring the name and method of its operations in order to collect commissions or brokerage fees from respondent and from others. Said company shops the market and purchases products from several sellers, including respondent, and purchases where it is able to secure the most favorable prices and terms including the payment of commissions and brokerage fees. Said company is itself the respondent in a proceeding alleging these facts, docket 4928.

PAR. 6. The acts and practices of the respondent in promoting sales of sea-food products by paying to W. M. Meador & Co., 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 (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 October 3, 1944, issued and subsequently served its complaint in this proceeding upon the respondent, Washington Fish & Oyster Co., Inc., a corporation, charging it with the violation 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 respondent's answer thereto, the respondent withdrew said answer and filed in lieu thereof an answer admitting all the material allegations of fact set forth in said complaint and waiving intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint and substitute answer filed by the respondent; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

Findings

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Washington Fish & Oyster Co., Inc., is a corporation, organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 4, Seattle, Wash.

PAR. 2. The respondent is now, and for many years prior hereto has been, engaged in the business of packing, and in the sale and distribution of, fresh and frozen fish, salt and smoked fish, canned salmon, and other sea-food products, all of which are hereinafter referred to as "food products."

The respondent sells and distributes its sea-food products by two separate and distinct methods. The first and principal method is by utilizing intermediaries who act as respondent's agents in negotiating the sale of its sea-food products at respondent's prices and on respondent's terms, for which services such intermediaries are paid commissions or brokerage fees. The second method is by selling its sea-food products directly to a single large buyer, W. M. Meador & Co., to whom respondent pays, directly or indirectly, commissions or brokerage fees on such purchases of sea-food products purchased by it in its own name and for its 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 said W. M. Meador & Co., which is located in Mobile, Ala., a State other than the State in which the respondent is located; and, as a result of said sales and the respondent's instructions, such sea-food products have been shipped and transported across State lines by respondent to said buyer.

PAR. 4. 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 or brokerage, or other compensation, allowances, or discounts in lieu thereof, to W. M. Meador & Co., who purchased said sea-food products in its own name and for its own account.

PAR. 5. While said W. M. Meador & Co. designates itself a "broker," it is not a broker in fact. Contrary to the manner in which a broker operates, said company purchases and resells for its own account, taking title to and assuming all risks incident to ownership. If products shipped by respondent to it are lost or damaged in transit, it files claims with the carrier and collects damages from the carrier for its own account. Upon receipt of the products from respondent, said company warehouses them in its own warehouse or in public ware-

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houses, and insures the products in its own name against loss or damage. Subsequently, said company has pledged warehouse receipts and insurance contracts covering these products as security for loans from banks. When such products are sold by said company they are sold at prices, terms, and conditions of sale determined by said company and are invoiced in the name of said company, which assumes full and complete credit risks.

Said company masks these buying operations under the fictionalized designation of "broker," "merchandise broker," or "primary distributor," for the sole purpose of coloring the name and method of its operations in order to collect commissions or brokerage fees from respondent and from others. Said company shops the market and purchases products from several sellers, including respondent, and purchases where it is able to secure the most favorable prices and terms, including the payment of commissions and brokerage fees.

CONCLUSION

The paying and granting by the respondent, directly or indirectly, of commissions or brokerage, or other compensation, allowances, or discounts in lieu thereof, to buyers of its food products who purchase such food products in their own names and for their own accounts for resale, as hereinabove found, are 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 substitute answer of the respondent, which substitute answer admits all 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 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 an act of Congress approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That the respondent, Washington Fish & Oyster Co., Inc., a corporation, and its officers, agents, representatives, and em-

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ployees, directly or through any corporate or other device in connection with the sale and distribution of canned salmon, fresh and frozen fish, salt and smoked fish, and other sea-food products in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to any buyer, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, upon purchases made for such buyer's own account.

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.

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IN THE MATTER OF

C. C. WADDILL COMPANY, INC.

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 OF CONGRESS APPROVED JUNE 19, 1936

Docket 5270. Complaint, Jan. 30, 1945—Decision, Mar. 25, 1946

Where a corporation engaged, (1) as a broker of food products and, (2) as a direct buyer from various packers, processors, canners, and other sellers located in other States, of canned fish products, canned fruits and vegetables, and other commodities, and which operated two large warehouses in which it stored, and from which it thereafter sold, substantial quantities of such food products, and which, in connection with such direct purchases was a trader for profit, shopping the market, taking title, assuming risks, etc., and invoicing products sold to its customers for its own account and at its own prices and terms and reaping a profit or sustaining a loss, as the case might be—

Received and accepted, in connection with the purchase of said food products for its own account as a direct buyer, commissions and brokerage, or compensation, allowances, and discounts in lieu thereof, through permitted deduction, customarily, from the invoice price of the foods products purchased by it, of an amount equal to, or approximately equal to, the commissions or brokerage fees paid by sellers concerned to their brokers:

Held, That such receipt and acceptance by said corporations, directly or indirectly, of commissions or brokerage, or compensation, allowances, or discounts in lieu thereof, from sellers of food products on purchases made for its own account, were in violation of subsection (c) of section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. William P. Smith, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of 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 C. C. Waddill Co., Inc., 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 located at 221 East Water Street, Norfolk, Va. Respondent since June 19, 1936, has been and is now engaged in business as a broker, and as a direct