

Complaint

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

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buyer of food products. The respondent as a direct buyer of food products has engaged in the business of buying and selling canned fish products, canned fruits and vegetables, and other commodities (all of which are hereinafter designated as food products) for its own account for resale. The respondent operates two large warehouses in Norfolk in which it stores and from which it thereafter sells substantial quantities of such food products.

PAR. 2. In the course and conduct of its said business since June 19, 1936, respondent has bought in its own name and for its own account for resale food products from various packers, processors, canners, and other sellers, who are located in States other than the State in which respondent is located, and as a result of respondent's purchases and its instructions such food products are shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. The respondent operates its business by the use of two separate and distinct methods, namely, (1) as "brokers" of food products and (2) as "direct buyers" of food products.

First. Respondent's business as "brokers" of food products may be described as follows: Respondent in such capacity acts as sales agent which negotiates the sale of food products for and on account of seller-principals, and respondent's only compensation is a commission or brokerage fee paid by such seller-principals.

The respondent solicits and obtains orders for such food products at the respective seller-principals' prices and on such seller-principals' terms of sale. The respondent as a food broker transmits purchase orders to its several seller-principals who thereafter invoice and ship such food products to the customer.

The respondent as brokers of food products has no financial interest in the food products it sells. Its only financial interest is the commission or brokerage fee it receives and accepts from the seller-principal for making the sale. Such commissions or brokerage fees are customarily based on a percentage of the invoice sales price of the food products sold.

The respondent in this capacity is a broker and not a trader for profit. The respondent does not take title to, or have any financial interest in, the food products sold and neither makes a profit nor suffers any loss on the transaction. This phase of respondent's business is not challenged by the complaint.

Second. Respondent's business as a "direct buyer" of food products may be described as follows: The respondent transmits its own purchase orders for food products directly to the various interstate sellers

from whom it buys. Such sellers invoice and ship such food products directly to respondent. The respondent receives and accepts, directly or indirectly, from the respective sellers from whom it buys commissions or brokerage fees. Such commissions or brokerage fees are customarily paid to the respondent by various sellers by permitting the respondent to deduct from the invoice price of the food products purchased an amount which is equal to, or approximately equal to, the commissions or brokerage fees such sellers pay their brokers.

The respondent in connection with such purchases is a direct buyer and as such is a trader for profit, purchasing and reselling such food products in its own name and for its own account and at its own prices and on its own terms, taking title to such food products and assuming all the risk incident to ownership.

The respondent before purchasing shops the market, purchasing where it is able to secure the most favorable prices and terms, including the payment of commissions or brokerage fees.

The respondent pays the price of the food products purchased from such sellers as a condition precedent to the delivery of such food products by the carrier to it. If such food products shipped to the respondent by such seller are lost or damaged in transit, the respondent files claim with the carrier and collects damages from the carrier in its own name and for its own account.

The respondent enters into formal contracts with its sellers or with some of its sellers whereby respondent contracts to buy, and the sellers contract to sell, definite quantities of certain food products at a stated price. Many of such contracts require the seller to deliver to the respondent such food products over an extended period of time at a stated price.

The respondent upon receipt of such food products from its various sellers warehouses such products in its own warehouses and insures the food products at its own expense and in its own name and for its own account against contingent loss or damage. Subsequently respondent pledges warehouse receipts and insurance contracts covering the products it has warehoused and insured as security for loans from banks.

The respondent in its annual tax returns sets out the value of the food products it has purchased for a stated year, and the amount of profit it has received on the sale of such products or the losses it has sustained on such sales. On the basis of respondent's declaration, respondent's taxes are assessed and paid.

When respondent sells such food products, it invoices the products to its customers in its own name and for its own account and at prices and on terms it determines. The respondent assumes full and complete

credit risk on such transactions, reaping a profit or sustaining a loss thereon, as the case may be.

PAR. 4. The receipt and acceptance, since June 19, 1936, by respondent C. C. Waddill Co., Inc., of commissions, brokerage or other compensation, or discounts in lieu thereof, as set forth under method two in paragraph 3 hereof, and such acts and practices as hereinabove set forth are in violation of the provisions 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 January 30, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, C. C. Waddill 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 AS TO THE FACTS

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 buyer of food products. The respondent as a direct buyer of food products has engaged in the business of buying and selling canned fish products, canned fruits and vegetables, and other commodities

(all of which are hereinafter designated as "food products"), for its own account for resale, which are purchased from various packers, processors, canners, and other sellers who are located in States other than the State in which respondent is located, and, as a result of respondent's purchases and its instructions, such food products are shipped and transported by the respective sellers thereof across State lines to the respondent. The respondent operates two large warehouses in Norfolk in which it stores, and from which it thereafter sells, substantial quantities of such food products.

PAR. 2. In the course and conduct of its said business and in connection with the purchase of food products in interstate commerce for its own account as a direct buyer, the respondent since June 19, 1936, has received and accepted commissions and brokerage, or compensation, allowances, and discounts in lieu thereof.

The respondent when purchasing for its own account transmits its own purchase orders for food products directly to the various interstate sellers from whom it buys. Such sellers invoice and ship such food products directly to respondent. The respondent receives and accepts, directly or indirectly, from the respective sellers from whom it buys, commissions or brokerage fees. Such commissions or brokerage fees are customarily paid to the respondent by various sellers by permitting the respondent to deduct from the invoice price of the food products purchased an amount which is equal to, or approximately equal to, the commissions or brokerage fees such sellers pay their brokers.

The respondent in connection with such purchases is a direct buyer and as such is a trader for profit, purchasing and reselling such food products in its own name and for its own account and at its own prices and on its own terms, taking title to such food products and assuming all the risk incident to ownership. If such food products shipped to the respondent by such seller are lost or damaged in transit, the respondent files claim with the carrier and collects damages from the carrier in its own name and for its own account.

The respondent, before purchasing, shops the market, purchasing where it is able to secure the most favorable prices and terms, including the payment of commissions or brokerage fees.

The respondent enters into formal contracts with its sellers or with some of its sellers whereby respondent contracts to buy, and the sellers contract to sell, definite quantities of certain food products at a stated price. Many of such contracts require the seller to deliver to the respondent such food products over an extended period of time at a stated price.

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The respondent, upon receipt of such food products from its various sellers, warehouses such products in its own warehouses and insures the food products at its own expense and in its own name and for its own account against contingent loss or damage and pledges warehouse receipts and insurance contracts covering the products it has warehoused and insured as security for loans from banks.

The respondent in its annual tax returns sets out the value of the food products it has purchased for a stated year, and the amount of profit it has received on the sale of such products or the losses it has sustained on such sales. On the basis of respondent's declaration, respondent's taxes are assessed and paid.

When respondent sells such food products, it invoices the products to its customers in its own name and for its own account and at prices and on terms it determines. The respondent assumes full and complete credit risk on such transactions, reaping a profit or sustaining a loss thereon as the case may be.

CONCLUSION

The receipt and acceptance by the respondent, 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, as herein 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, C. C. Waddill Co., Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the purchase of canned fish products, canned fruits and vegetables, and

other commodities in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, any thing of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, on or in connection with purchases made for respondent'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

PHILLIPS SALES COMPANY, INC., ET AL.

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 5273. Complaint, Feb. 3, 1945—Decision, Mar. 25, 1946

Where a corporation engaged in the interstate sale and distribution of canned vegetables, canned meats, and other food products, (1) through intermediaries or food brokers, who acted as its agents in negotiating the sale of its products at its prices and on its terms, and were paid commissions or brokerage fees therefor, and (2) by direct sale to buyers in their own names and for their own accounts—

Transmitted, paid, and delivered, directly or indirectly, to two partners purchasing for their own account for resale, commissions or brokerage fees, or other compensation, allowances, or discounts in lieu thereof, in substantial amounts; and

Where said partners, engaged in the purchase of food products for resale in their own name and for their own account—

Received and accepted from the aforesaid corporation and others commissions or brokerage fees or other compensation, allowances, or discounts in lieu thereof as aforesaid, upon such purchases:

Held, That such paying and granting by aforesaid corporate seller, and such receiving by said partners, of commissions or brokerage or other compensation, allowances, or discounts in lieu thereof upon such purchases made for buyers' own account, for resale, as above set forth, were in violation of subsection (c) of section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Weinberg & Green, of Baltimore, Md., for Phillips Sales Co., Inc.

Mr. William P. Smith, of Washington, D. C., for Max E. Guthman and Aaron Guthman.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are 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 Phillips Sales Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 33 Race Street, Cambridge, Md. The respondent Phillips Sales Co., Inc., since June 19, 1936, has been and is now engaged in the business