

Complaint

42 F. T. C.

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

of selling and distributing canned vegetables, canned meats, and other food products (all of which are hereinafter designated as "food commodities") in its own name and for its own account. This respondent is hereinafter designated as the "respondent seller."

PAR. 2. The respondent seller sells and distributes its food commodities by two separate and distinct methods. The first and principal method is by utilizing intermediaries or food brokers who act as respondent seller's agents in negotiating the sale of respondent seller's food commodities at respondent seller's prices and on respondent seller's terms, and for which service to the respondent seller such intermediaries or food brokers are paid commissions or brokerage fees. The second method utilized by the respondent seller is by the direct sale of substantial quantities of its food commodities directly to buyers, representative of whom is Haas-Guthman Co., to whom respondent seller pays, directly or indirectly, commissions or brokerage fees on such buyer's purchases of respondent seller's food commodities which are purchased by said buyers in their own name and for their own account.

PAR. 3. Respondents Max E. Guthman and Aaron Guthman are copartners, doing business under the name and style of Haas-Guthman Co., which firm is located at 601 West Hull Street, Savannah, Ga. The respondents Max E. Guthman and Aaron Guthman are hereinafter referred to as "respondent buyer." The respondent buyer since June 19, 1936, has been and is now engaged principally in the business of buying food commodities for resale and selling such commodities in its own name and for its own account.

The respondent buyer in some instances, but to a lesser degree, also acts as an intermediary or broker for certain sellers of food commodities for whom respondent buyer negotiates the sale of such sellers' products at such sellers' prices and such sellers' terms.

PAR. 4. Respondent buyer in the course and conduct of its said business since June 19, 1936, has purchased a substantial portion of its food commodities from Phillips Sales Co., Inc., which firm is located in a State other than the State in which respondent buyer is located, and as a result of respondent buyer's orders and instructions such food commodities have been shipped and transported across State lines by respondent seller to said respondent buyer. The respondent buyer's purchases from the respondent seller since June 19, 1936, are representative of the respondent buyer's purchases of food commodities from numerous other interstate sellers, upon which purchases respondent buyer has also received commissions or brokerage fees.

PAR. 5. Respondent seller, Phillips Sales Co., Inc., since June 19,

1936, in connection with the sale of its food commodities in interstate commerce to respondent buyer, Haas-Guthman Co., for its own account for resale as hereinbefore set forth, has transmitted, paid, and delivered, and does transmit, pay, and deliver, directly or indirectly, to said respondent buyer for its own account commissions, brokerage fees, or other compensation or allowances in lieu thereof in substantial amounts, and respondent buyer, Haas-Guthman Co., since June 19, 1936, has received and accepted and is now receiving and accepting commissions, brokerage fees, and other compensation or allowances in lieu thereof in connection with said respondent buyer's interstate purchases of food commodities from respondent seller and from other interstate sellers from whom respondent buyer purchases and has purchased food commodities in its own name and for its own account for resale.

PAR. 6. The foregoing acts of respondent seller, Phillips Sales Co., Inc., in granting or paying commissions or brokerage fees on its sales of food commodities to respondent buyer, Haas-Guthman Co., and the foregoing acts of respondent buyer, Haas-Guthman Co., in receiving or accepting commissions or brokerage fees on its purchases of food commodities from respondent seller, Phillips Sales Co., Inc., and from other interstate sellers 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 February 3, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, Phillips Sales Co., Inc., a corporation, and Max E. Guthman and Aaron Guthman, copartners doing business as Haas-Guthman Co., charging them 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 respondents' answers thereto, the respondents withdrew said answers and filed in lieu thereof answers 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 answers filed by

the respondents; 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 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 of selling and distributing canned vegetables, canned meats, and other food products (all of which are hereinafter designated as "food commodities") in its own name and for its own account. This respondent is hereinafter designated as the "respondent seller."

PAR. 2. Respondents Max E. Guthman and Aaron Guthman are copartners, doing business under the name and style of Haas-Guthman Co., which firm is located at 601 West Hull Street, Savannah, Ga. The respondents Max E. Guthman and Aaron Guthman are hereinafter referred to as "respondent buyer." The respondent buyer, since June 19, 1936, has been, and is now, engaged principally in the business of buying food commodities for resale and selling such commodities in its own name and for its own account.

PAR. 3. Respondent seller, Phillips Sales Co., Inc., sells and distributes its food commodities by two separate and distinct methods. The first and principal method is by utilizing intermediaries or food brokers who act as respondent seller's agents in negotiating the sale of respondent seller's food commodities at respondent seller's prices and on respondent seller's terms, for which service to the respondent seller such intermediaries or food brokers are paid commission or brokerage fees.

The second method utilized by the respondent seller is by the direct sale of substantial quantities of its food commodities directly to buyers (representative of whom is Hass-Guthman Co.) to whom respondent seller pays, directly or indirectly, commissions or brokerage fees on such buyers' purchases of respondent seller's food commodities which are purchased by said buyers in their own names and for their own accounts.

PAR. 4. Respondent buyer, Max E. Guthman and Aaron Guthman, copartners doing business as Hass-Guthman Co., in the course and conduct of its said business since June 19, 1936, has purchased a sub-

stantial portion of its food commodities from Phillips Sales Co., Inc., which firm is located in a State other than the State in which respondent buyer is located, and, as a result of respondent buyer's orders and instructions, such food commodities have been shipped and transported across State lines by respondent seller to said respondent buyer. The respondent buyer's purchases from the respondent seller since June 19, 1936, are representative of the respondent buyer's purchase of food commodities from numerous other interstate sellers, upon which purchases respondent buyer has also received commissions or brokerage fees.

PAR. 5. Respondent seller, Phillips Sales Co., Inc., since June 19, 1936, in connection with the sale of its food commodities in interstate commerce to respondent buyer, Hass-Guthman Co., for its own account for resale, as hereinbefore set forth, has transmitted, paid, and delivered, directly or indirectly, to said respondent buyer for its own account, commissions or brokerage fees, or other compensation, allowances, or discounts in lieu thereof, in substantial amounts; and respondent buyer, Haas-Guthman Co., since June 19, 1936, has received and accepted commissions or brokerage fees, or other compensation, allowances, or discounts in lieu thereof, in connection with said respondent buyer's interstate purchases of food commodities from respondent seller and from other interstate sellers from whom respondent buyer has purchased food commodities in its own name and for its own account for resale.

CONCLUSION

The paying and granting by the respondent Phillips Sales Co., Inc., a corporation, directly or indirectly, of commissions or brokerage, or compensation, allowances, or discounts in lieu thereof, to buyers of its food commodities who purchase such food commodities in their own names and for their own accounts for resale and the receiving and accepting by the respondents Max E. Guthman and Aaron Guthman, trading as Haas-Guthman Co., directly or indirectly, of commissions or brokerage, or compensation, allowances, or discounts in lieu thereof, on purchases made for their 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 answers of the respondents, which substitute answers admit all the material

allegations of fact set forth in said complaint and waive 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 respondents have 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 Phillips Sales Co., Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the sale and distribution of canned vegetables, canned meats, and other 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 respondents Max E. Guthman and Aaron Guthman, individuals, trading as Haas-Guthman Co. or trading under any other name, and their respective agents, representatives, and employees, directly or through any corporate or other device in connection with the purchase of canned vegetables, canned meats, and other food products 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, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, on or in connection with purchases made for respondents' own account.

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.

Complaint

42 F. T. C.

IN THE MATTER OF

CARL RUBENSTEIN 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 5279. Complaint, Feb. 12, 1945—Decision, Mar. 25, 1946

Where two partners, two corporations, and a third individual, an official and large stockholder thereof, with offices and places of business in common and a community of interest, engaged in the packing and interstate sale and distribution, under their own brand names and also under brands of their buyers, of canned salmon, canned tuna, canned mackerel, and other canned sea food products, (1) through legitimate intermediaries who acted as their agents and were paid commissions and brokerage fees for so doing; and also, (2) direct to large buyers, who might be either so-called "buying brokers" or chain stores, large wholesalers, and members of buying groups, who purchased in their own names and for their own accounts for resale at prices and terms dictated by them, and who, contrary to brokers, were traders for profit, shopping the market, taking title, assuming risks, filing claims, warehousing, etc., and making a profit or suffering a loss, as the case might be—

Paid or granted to such direct buyers, directly or indirectly, commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, on such purchases, by means of permitting deduction from invoice price of amount equal or approximately equal to commissions or brokerage fees paid by them to their brokers, or by selling such buyers at a net price reflecting the same:

Held, That such paying and granting, directly or indirectly, of commissions, brokerage, or other compensation, and allowances or discounts in lieu thereof, to buyers purchasing in their own names and for their own accounts for resale, under the circumstances set forth, were in violation of subsection (c) of section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Medley & Haugland, of Seattle, Wash., for respondents.

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 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 Carl Rubenstein, an individual residing in the city of Seattle, State of Washington, is a partner with his son,