

## Complaint

## IN THE MATTER OF

## WILLIAM R. HILL &amp; CO.

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 5295. Complaint, Mar. 16, 1945—Decision, Mar. 25, 1946*

Where an individual engaged (1) as a food broker in soliciting and obtaining orders for fish products, canned fruits and vegetables and other commodities at the respective seller-principals' prices and terms, and with no financial interest in products concerned other than receipt of commission or fee involved: and (2) as "direct buyer" thereof from the various packers, processors, canners, and other sellers located in other States, shopping the market, taking title, warehousing, assuming risks of ownership, filing claims, etc., and invoicing customers in his own name, and, as a "trader for profit" making a profit or sustaining a loss as case might be on such buying and selling at his own prices and terms—

Received and accepted, directly, from the respective sellers from whom he purchased food products as such "direct buyer," commissions or brokerage fees, customarily paid by permitted deduction by him from invoice price of such purchases of amount equal to, or approximately equal to, the commissions or brokerage fees they paid their brokers:

*Held*, That such receipt and acceptance by said individual of commissions or brokerage, or discount or allowance in lieu thereof, upon purchases for his own account as aforesaid, was violative of the provisions 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 William R. Hill is an individual doing business as William R. Hill & Co. with his principal office and place of business located at 114 Virginia Street, Richmond, Va., and is also vice president and a large stockholder in Chas. E. Brauer Co., Inc., a wholesale grocery and confectionery firm, located at 19 South Fourteenth Street, Richmond, Va. The respondent since June 19, 1936, has

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been, and is now, engaged in business as a broker of food products, and also 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 his own account for resale. The respondent operates warehouses in Richmond, Va., in which he stores, and from which he thereafter sells, substantial quantities of such food products.

PAR. 2. In the course and conduct of his said business since June 19, 1936, respondent has bought in his own name and for his 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 his instructions, such food products are shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. The respondent operates his 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 sales. The respondent as a food broker transmits purchase orders to his 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 he sells. His only financial interest is the commission or brokerage fee he 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 his own purchase orders for food products directly to the various interstate sellers

from whom he 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 he buys commissions or brokerage fees. Such commissions or brokerage fees are customarily, but not always, 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 his own name and for his own account and at his own prices and on his 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 he 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 him. 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 his own name and for his own account.

The respondent enters into formal contracts with his sellers or with some of his 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 his various sellers warehouses such products in his own warehouses and insures the food products at his own expense and in his own name and for his own account against contingent loss or damage. Subsequently respondent pledges warehouse receipts and insurance contracts covering the products he has warehoused and insured as security for loans from banks.

The respondent since June 19, 1936, in his annual tax returns sets out the value of the food products he has purchased for a stated year, and the amount of profit he has received on the sale of such products or the losses he 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, he invoices the products

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to his customers in his own name and for his own account and at prices and on terms he 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 William R. Hill, an individual doing business as William R. Hill & Co., 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 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C. sec. 13), the Federal Trade Commission, on March 16, 1945, issued, and thereafter served, its complaint in this proceeding upon the respondent, William R. Hill, an individual doing business as William R. Hill & Co., charging him with the violation of subsection (c) of section 2 of said Clayton Act, as amended. Subsequently, the respondent filed an amended answer admitting all of the material allegations of fact set forth in the complaint but denying that the acts and practices described in the complaint constituted a violation of said act. In his answer respondent waived all intervening procedure, including hearings as to the facts, the trial examiner's report, the filing of briefs, and oral argument. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and answer, 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. The respondent, William R. Hill, is an individual doing business as William R. Hill & Co., with his principal office and place of business located at 114 Virginia Street, Richmond, Va. Respondent since June 19, 1936, has been, and is now, engaged in business as a broker of food products, and also as a direct buyer of food products. 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 his own account for resale. Respondent operates warehouses in Richmond, Va., in which he stores, and from which he thereafter sells, substantial quantities of such food products.

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

PAR. 3. Respondent operates his business by the use of two separate and distinct methods, namely, (1) as a "broker" of food products, and (2) as a "direct buyer" of food products.

First. Respondent's business as a "broker" of food products may be described as follows: Respondent in such capacity acts as a sales agent and 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.

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

Respondent as a broker of food products has no financial interest in the food products he sells. His only financial interest is the commission or brokerage fee he 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.

Respondent in this capacity is a broker and not a trader for profit. 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 involved in the present proceeding.

Second. Respondent's business as a "direct buyer" of food products may be described as follows: Respondent transmits his own purchase orders for food products directly to the various interstate sellers from whom he buys. Such sellers invoice and ship such food products

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directly to respondent. Respondent receives and accepts, directly or indirectly, from the respective sellers from whom he buys commissions or brokerage fees. Such commissions or brokerage fees are customarily, but not always, paid to respondent by various sellers, by permitting 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.

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 his own name and for his own account and at his own prices and on his own terms, taking title to such food products and assuming all the risk incident to ownership.

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

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 him. If such food products shipped to respondent by such seller are lost or damaged in transit, respondent files claims with the carrier and collects damages from the carrier in his own name and for his own account.

Respondent enters into formal contracts with his sellers or with some of his 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 respondent such food products over an extended period of time at a stated price.

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

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

## Order

## CONCLUSION

The receipt and acceptance by respondent of commissions or brokerage, or discounts or allowances in lieu thereof, upon purchases made for his own account, as herein found, is violative of the provisions of subsection (c) of section 2 of the aforesaid Clayton Act, as amended.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of the respondent, in which answer respondent admits all of the material allegations of fact set forth in the complaint and waives all intervening procedure, and the Commission having made its findings as to the facts and its conclusion that the 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 the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13) :

*It is ordered,* That the respondent, William R. Hill, individually and trading as William R. Hill & Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from :

Receiving or accepting, directly or indirectly, from any seller anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, upon purchases made for respondent's own account.

*It is further ordered,* That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

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## IN THE MATTER OF

## SOUTHERN CALIFORNIA FISH CORPORATION

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 5296. Complaint, Mar. 21, 1945—Decision, Mar. 25, 1946*

Where a corporation engaged in the packing and in the interstate sale and distribution, under its own brand names and also under brands of its buyers, of canned tuna, canned mackerel, canned sardines, and other sea food products, (1) through legitimate intermediaries, who acted as its agents and to whom it paid commissions and brokerage fees for the services so rendered, and, (2) to direct buyers who purchased for their own accounts for resale, at their own prices and terms, and who, contrary to brokers, were traders for profit, shopping the market, taking title, assuming risks, filing claims, warehousing, etc., in making a profit or incurring a loss, as the case might be;

Paid or granted to such direct buyers, directly or indirectly, commissions or brokerage, or other compensation, allowances or discounts in lieu thereof, on such purchases, thru permitted deduction, among other ways, of an amount from invoice price equal or approximately equal to commission or brokerage fees paid by it to its brokers, or by selling such buyers at a net price which reflected such brokerage or by remitting brokerage to buyer by check:

*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 purchasing in their own names and 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.

*Mr. Gordon P. Shallenberger*, of San Pedro, Calif., 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 Southern California Fish Corp. is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business located at Terminal Island, Calif. The respondent also maintains a branch office at San Pedro, Calif.

PAR. 2. Respondent, since June 19, 1936, has been and is now en-