

Complaint

42 F. T. C.

IN THE MATTER OF

HOVDEN FOOD PRODUCTS CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO 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 5303. Complaint, Apr. 10, 1945—Decision, Mar. 25, 1946

Where a corporation engaged in packing and in the interstate sale and distribution of canned sardines, canned mackerel, and canned squid, (1) through legitimate intermediaries who acted as its agents and received commissions and brokerage fees therefor, and (2) direct to large buyers who, masking their buying operations under such fictionalized designations as "broker" "merchandise broker," or "primary distributor," in fact purchased in their own names and for their own accounts, shopping the market, taking title, assuming risks, filing claims, warehousing, etc.—

Paid and granted to such direct buyers, directly or indirectly, commissions or brokerage fees or other compensation, allowance, or discount in lieu thereof, upon such purchases made in their own names and for their own account:

Held, That such paying or granting, directly or indirectly, of commissions or brokerage, or compensation, allowance or discount in lieu thereof, to purchasers of its food products 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.

Pillsbury, Madison & Sutro, of San Francisco, 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, Hovden Food Products 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 Ocean View and David Streets, Monterey, Calif.

PAR. 2. Respondent is now engaged, and for many years prior hereto has been engaged, in the business of packing sardines, mackerel, and squid, and selling such canned sea-food products to numerous buyers, including the buyers hereinafter named.

The respondent sells and distributes its canned sea-food products by two separate methods. The first method is by utilizing intermedi-

aries who act for respondent 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 by respondent commissions or brokerage fees. The second method effectuated by the respondent is by selling its sea-food products directly to large buyers, such as Allison-Bedford Co., Chicago, Ill.; East Asiatic Co., San Francisco, Calif.; T. W. Holt, Jacksonville, Fla.; Koehler-Spalding Co., Louisville, Ky.; W. M. Meador & Co., Inc., Mobile, Ala.; Morgan, Napier Co., Nashville, Tenn.; North Star Co., Seattle, Wash.; Parrott & Co., San Francisco, Calif.; J. R. Poole Co., Boston, Mass.; E. J. Rinaud Co., New York City, N. Y.; and Loveless-Overton Co., Fort Worth, Tex.; to whom respondent pays, directly or indirectly, commissions or brokerage fees on such purchases of sea-food products purchased by such buyers in their own name and for their 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 the buyers named in paragraph 2 hereof, some of which are located in States other than the State in which 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 buyers.

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 each of said buyers who purchased sea-food products in their own name and for their own account.

PAR. 5. While said buyers named in paragraph 2 hereof designate themselves as "brokers," they are not brokers in fact. Contrary to the manner in which a broker operates, said buyers purchase and resell for their own account; they take title to the products so purchased from the respondent and assume all risks incident to ownership. Each of said buyers pays the price of the products purchased from respondent as a condition precedent to delivery of the goods by the carrier to them. If products shipped by respondent are lost or damaged in transit, they file claims with the carrier and collect damages from the carrier for their own account. Upon receipt of the products from respondent said buyers warehouse them in their own warehouses or in public warehouses and they insure the products in their own name against loss or damage. Subsequently, some of said buyers have on occasion pledged warehouse receipts and insurance contracts covering these products as security for loans from banks.

When such products are sold by said buyers they are sold at prices, terms, and conditions of sale determined by said buyers and are invoiced in the name of said buyers, who assume full and complete credit risks.

Each of said buyers 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. Each of said buyers 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.

PAR. 6. The acts and practices of the respondent in promoting sales of sea-food products by paying to Allison-Bedford Co., Chicago, Ill.; East Asiatic Co., San Francisco, Calif.; T. W. Holt, Jacksonville, Fla.; Koehler-Spalding Co., Louisville, Ky.; W. M. Meador & Co., Inc., Mobile, Ala.; Morgan, Napier Co., Nashville, Tenn.; North Star Co., Seattle, Wash.; Parrott & Co., San Francisco, Calif.; J. R. Poole Co., Boston, Mass.; E. J. Rinaud Co., New York City, N. Y.; and Loveless-Overton Co., Fort Worth, Tex., 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 April 10, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Hovden Food Products Corp., 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

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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, Hovden Food Products Corp., is a corporation organized and existing under and by virtue of the laws of the State of California, and with its principal office and place of business located at Ocean View and David Streets, Monterey, Calif.

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, canned sardines, canned mackerel, and canned squid, all of which are hereinafter referred to as "food products."

PAR. 3. Respondent causes said food products, when sold by it, to be transported from its aforesaid place of business in the State of California to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said food products in commerce among and between the various States of the United States.

PAR. 4. Respondent sells said food products through legitimate intermediaries who act as its agents and to whom are paid commissions and brokerage fees for the services so rendered. In addition, the respondent also sells its food products direct to large buyers who designate themselves as "brokers" but who in fact purchase from the respondent in their own names and for their own accounts.

PAR. 5. Respondent, since June 19, 1936, in connection with the sale of its food products in interstate commerce to the various large buyers who designate themselves as "brokers," has paid or granted to such buyers, directly or indirectly, commissions or brokerage, or other compensation, allowance, or discount in lieu thereof, on purchases made in their own names and for their own accounts for resale.

While such buyers have designated themselves as "brokers," they are not brokers in fact. Contrary to the manner in which a broker operates, said buyers purchase and resell for their own accounts; they take title to the products so purchased from the respondent; and they assume all risks incident to ownership. Each of said buyers pays the price of the products purchased from respondent as a condition precedent to delivery of the goods by the carrier to them. If products shipped by respondent are lost or damaged in transit, they file claims

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with the carrier and collect damages from the carrier for their own accounts. Upon receipt of the products from respondent, said buyers warehouse them in their own warehouses or in public warehouses and they insure the products in their own names against loss or damage. Subsequently, some of said buyers have on occasion pledged warehouse receipts and insurance contracts covering these products as security for loans from banks. When such products are sold by said buyers, they are sold at prices, terms, and conditions of sale determined by said buyers and are invoiced in the name of said buyers, who assume full and complete credit risks.

Each of said buyers 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. Each of said buyers 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 any compensation, allowance, or discount 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, Hovden Food Products Corp.,

a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the sale and distribution of canned sardines, canned mackerel, and canned squid 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

SEBASTIAN-STUART FISH CO. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO ALLEGED VIOLATION OF
SUBSEC. (C) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1915, AS
AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5365. Complaint, Aug. 10, 1945—Decision, Mar. 25, 1946

Where a corporation engaged in the packing and in the interstate sale and distribution of canned fish and fresh fish, (1) through intermediaries or food brokers, who acted as its agents in negotiating the sale of its products at prices and terms dictated by it and received commissions or brokerage fees therefor, and, (2) direct to buyers purchasing in their own names and for their own accounts for resale—

Paid or granted, directly or indirectly, to certain partners and to others engaged in buying its products in their own names, and for their own account and in resale thereof for profit, commissions or brokerage fees, or compensation or allowances in lieu thereof, in substantial amounts; and

Where said partners and others—

Received and accepted from said corporate seller commissions or brokerage fees, or compensation or allowances in lieu thereof, on such purchases for their own account:

Held, That such paying or granting by aforesaid seller of commissions or brokerage fees to buyers upon purchases for their own account, and such receipt and acceptance by said buyers of commissions or brokerage fees upon purchases for their 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 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 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. Sebastian-Stuart Fish Co. is a corporation organized and existing under and by virtue of the laws of the State of Washington with its principal office and place of business located at Spokane Street Dock, Seattle, Wash.

The respondent Sebastian-Stuart Fish Co. has been and is now engaged in the business of packing, selling, and distributing canned