

Complaint

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IN THE MATTER OF

CARROLL E. LINDSEY, GORDON T. ROU, AND LAKELAND
HIGHLANDS CANNING 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. 14, 1914,
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5383. Complaint, Sept. 25, 1945.—Decision, Apr. 15, 1946

Where a corporation and two individuals, its president and secretary-treasurer, engaged in canning and in buying, selling, and distributing fruit juices and other fruit products (1) through intermediaries or brokers who acted as their agents in negotiating the sale of their products at prices and upon terms fixed by them and whom they paid commissions or brokerage fees for such services; and (2) to "direct buyers," who purchased in their own name and for their own account for resale, to whom they invoiced and shipped the products purchased, and from whom they collected the purchase price thereof—

Paid or granted, directly or indirectly, to such direct buyers, located in other States, to whom they sold and distributed a substantial portion of their products, commissions, brokerage, or other compensation or allowances or discounts in lieu thereof:

Held, That such paying or granting by them of commissions, brokerage, etc., to buyers upon purchases made for such buyers' own account, was violative of subsection (c) of section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Reeves, Allen & Johnson, of Tampa, Fla., 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 Carroll E. Lindsey is an individual residing in Highland City, Fla. He is now president of Lakeland Highlands Canning Co., and has been an officer of that company since some time after June 19, 1936. After becoming an officer, and at the present time and for some time past as president, respondent Lindsey has exercised and still exercises a substantial degree of authority and control over the business conducted by said company, including the direction of its distribution and sales policies.

PAR. 2. Respondent Gordon T. Rou is an individual residing in Highland City, Fla. He is now secretary and treasurer of Lakeland Highlands Canning Co., and has been an officer of that company since some time after June 19, 1936. After becoming an officer, and at the present time and for some time past as secretary and treasurer, respondent Rou has exercised and still exercises a substantial degree of authority and control over the business conducted by said company, including the direction of its distribution and sales policies.

PAR. 3. Respondent Lakeland Highlands Canning Co., Inc., is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at Highland City, Fla.

PAR. 4. Respondents Carroll E. Lindsey, as president, and Gordon T. Rou, as secretary and treasurer of said corporation, and Lakeland Highlands Canning Co., Inc., are now engaged, and for many years prior hereto have engaged, in the business of buying, selling, canning, and distributing orange juice and grapefruit juice and other fruit juices and fruit products for their own account. The respondents' said business is conducted under the name of, and for the account of, Lakeland Highlands Canning Co., Inc.

PAR. 5. The respondents sell and distribute their fruit juices and fruit products by two separate and distinct methods. The first and principal method is by utilizing intermediaries or brokers who act as respondents' agents in negotiating the sale of their fruit juices and fruit products at respondents' prices and on respondents' terms and for which services to respondents such intermediaries or brokers are paid commissions or brokerage fees. This method of distributing respondents' commodities is not challenged by this complaint.

The second method, which is challenged by this complaint, is by the sale by respondents of their fruit juices and fruit products direct to buyers, who are paid by respondents, directly or indirectly, commissions or brokerage fees on such purchases. All such buyers referred to herein are "direct buyers". In transactions between respondents and such buyers respondents do not use intermediaries or brokers.

Such direct buyers transmit their own purchase orders for such commodities directly to the respondents. The respondents thereafter invoice and ship such commodities to such buyers from whom respondents collect the purchase price of the merchandise.

Some such buyers, upon receipt of such fruit juices and fruit products from respondents, warehouse such commodities in their own warehouses or in public warehouses, and insure the commodities at their

own expense, and in their own names, and for their own account against contingent loss or damage.

Representative of respondents' direct buyers are:

W. F. Pendleton Co., Inc., Valdosta, Ga.

Charles R. Allen, Charleston, S. C.

Austelle-Flinton Co., Orangeburg, S. C.

Britt-Pfaff Co., Raleigh, N. C.

The Halfhill Co., Los Angeles, Calif.

National Canned Food Distributors, Los Angeles, Calif.

Thomas E. Perry, Jr., Pittsburgh, Pa.

PAR. 6. The respondents, since June 19, 1936, in the course and conduct of their said business, have sold and distributed a substantial portion of their commodities through intermediaries or brokers to buyers and also directly to buyers located in States other than the State in which respondents are located and as a result of said sales and the respondents' instructions, such commodities have been shipped, and are now shipped and transported across State lines to such buyers so located.

PAR. 7. The respondents, since June 19, 1936, in connection with the interstate sale of their commodities have been and are now, paying or granting, or have paid or granted, directly or indirectly, commissions, brokerage or other compensation or allowances or discounts in lieu thereof, to buyers on their own purchases of respondents' commodities. Such buyers have purchased respondents' commodities in their own name and for their own respective accounts for resale.

PAR. 8. The acts and practices of the respondents Carroll E. Lindsey, as president and Gordon T. Rou, as secretary and treasurer of Lakeland Highlands Canning Co., Inc., and Lakeland Highlands Canning Co., Inc., a corporation, in promoting the sale of their commodities by paying to buyers, 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 (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 September 25, 1945, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof charging

them with the violation of subsection (c) of section 2 of said Clayton Act, as amended. Subsequently, the respondents 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 as amended. In their answer the respondents waived all intervening procedure, including hearings as to the facts, the filing of briefs, the trial examiner's report, 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. Respondent Lakeland Highlands Canning Co., Inc., is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at Highland City, Fla.

Respondent Carroll E. Lindsey, an individual, is now, and for some time last past has been, president of the respondent corporation.

Respondent Gordon T. Rou, an individual, is now, and for some time last past has been, secretary and treasurer of the respondent corporation.

Both of the individual respondents reside in Highland City, Fla. Each of them exercises, and for some time last past has exercised, a substantial degree of authority and control over the business conducted by the respondent corporation, including the directing of its distribution and sales policies.

PAR. 2. The respondents are now, and for many years last past have been, engaged in the business of canning, buying, selling, and distributing fruit juices and other fruit products.

Respondents sell and distribute their products by two separate and distinct methods. The first and principal method involves the utilization of intermediaries or brokers, who act as respondents' agents in negotiating the sale of respondents' products at such prices and upon such terms as are fixed by respondents. For their services, such intermediaries or brokers are paid commissions or brokerage fees by respondents. This phase of respondents' business is not involved in the present proceeding.

The second method involves the sale by respondents of their products directly to buyers and without the use of intermediaries or

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brokers. Such buyers, who are known as "direct buyers," purchase in their own name and for their own account for resale. They transmit their own purchase orders directly to respondents, and respondents invoice and ship to such buyers the products purchased and collect from such buyers the purchase price of the products.

PAR. 3. In the course and conduct of their business, the respondents have, since June 19, 1936, sold and distributed a substantial portion of their products to direct buyers located in States of the United States other than the State of Florida. As a result of such sales and respondents' instructions, such products have been shipped and transported across State lines to such buyers.

PAR. 4. In connection with such interstate sales to buyers purchasing in their own name and for their own account, respondents have, since June 19, 1936, paid or granted, directly or indirectly, to such buyers commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof.

CONCLUSION

The paying or granting by respondents of commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, to buyers upon purchases made for such buyers' own account, as herein found, is violative 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 respondents, in which answer respondents admit all of the material allegations of fact set forth in the complaint and waive all intervening procedure, and the Commission having made its findings as to the facts and its conclusion that the 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 the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13) :

It is ordered that, The respondents, Lakeland Highlands Canning Co., Inc., a corporation, its officers, and Carroll E. Lindsey and Gordon T. Rou as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or

other device, in connection with the sale and distribution of 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 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.

IN THE MATTER OF

HUDDERSFIELD WORSTED MILLS CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5009. Complaint, July 19, 1943—Decision, Apr. 23, 1946.

Huddersfield is an area in England where high grades of worsted or woolen cloth are manufactured, and for many years it has been the source of some of the finest woollens imported to the United States, which fact has been, and is, generally known to a substantial portion of purchasers of men's clothing in this country.

The word "worsted" has long been used in the trade and is understood by a substantial portion of the purchasing public to designate, describe, and refer to fabric composed entirely of wool, exclusive of ornamentations.

Where a corporation engaged under the corporate name "Huddersfield Worsted Mills Corporation," as a selling agent for a number of manufacturers in the interstate sale and distribution of textile fabrics for making suits, slacks, and other men's wearing apparel—

- (a) Falsely represented through use of the word "Huddersfield" in its corporate name and on labels and stationery and otherwise, and through the depiction of the lion similar to that of the British royal coat of arms, and through of the representations, directly and indirectly, that its said merchandise was imported from England; when in truth and in fact its fabrics were made in the United States from domestic material;
- (b) Falsely represented through use of the word "Mills" in its corporate name and the words "Manufacturers of Fine, Fancy Worsteds" on its stationery and otherwise, that it owned and operated or controlled the manufacturing plants or mills where the cloth it sold was manufactured; and
- (c) Falsely represented through the use of the word "Worsted" in its corporate name and on letterheads, invoices, and otherwise, that the cloth sold by it was composed entirely of wool;

When in fact practically none of the fabrics sold by it were composed entirely of wool and the great majority were composed of fibers other than wool; and it was not a manufacturer, from which a substantial portion of those who buy fabrics for making clothing for resale prefer to purchase direct as securing them advantages in price and in other respects;

With result of placing in the hands of dealers and jobbers a means of misleading the purchasing public; and of misleading such public into the erroneous belief that such representations and designations were true, and thereby of inducing the purchase in commerce of said fabrics and clothing made therefrom:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. S. F. Rose for the Commission.

Mr. Samuel R. Friedman, of New York City, for respondent.