

Complaint

42 F. T. C.

IN THE MATTER OF

CALIFORNIA LIMA BEAN GROWERS ASSOCIATION

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 4939. Complaint, Apr. 2, 1943—Decision, May 9, 1946

Where a corporation engaged in sale and distribution of lima beans, a substantial portion of which it sold directly to buyers purchasing for their own account, and in shipping such products across State lines pursuant to such sales—

- (a) Paid or granted, directly or indirectly, to such buyers, commissions, brokerage or other compensation, or allowances or discounts in lieu thereof, upon purchases made for such buyers' own account:

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

Mr. Edward S. Ragsdale for the Commission.

Redwine & Redwine, of Hollywood, Calif., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the 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 section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), hereby issues its complaint, stating its charged with respect thereto as follows:

PARAGRAPH 1. Respondent California Lima Bean Growers Association is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 400 South A Street, Oxnard, Calif. The respondent is engaged in the business of selling and distributing lima beans.

PAR. 2. The respondent California Lima Bean Growers Association is now engaged, and for many years prior hereto has engaged, in the business of marketing, selling and distributing lima beans in its own name and for its own account for resale.

PAR. 3. The respondent, in the course and conduct of its said business, sells and distributes a substantial portion of its lima beans directly to buyers. Many of such buyers are located in States other than the State in which respondent is located. Pursuant to said sales and the respondent's instructions, such lima beans are caused to be

shipped and transported across State lines to buyers who are located in various States of the United States.

PAR. 4. The respondent, since June 19, 1936, in connection with the distribution and sale of said lima beans in interstate commerce, in its own name and in its own behalf and account, for resale to numerous buyers located in various States of the United States other than the State where the respondent is located, has been and is now paying or granting, or has paid or granted, commissions, brokerage, or other compensation and allowances or discounts in lieu thereof to numerous buyers of said lima beans.

PAR. 5. The paying and granting by respondent of commissions, brokerage or other compensation and allowances or discounts in lieu thereof to the buyers of said lima beans and the acts and practices of the respondent California Lima Bean Growers Association in promoting such sales of lima beans by the payment to buyers, directly or indirectly, of commissions, brokerage or other compensation and allowances or discounts in lieu thereof as set forth above, is 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 April 2, 1943, issued and thereafter served its complaint in this proceeding upon the respondent, California Lima Bean Growers Association, a corporation, charging it 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 as amended. In its answer the respondent 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 amended 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:

Order

42 F. T. C.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, California Lima Bean Growers Association, is a corporation organized and existing under the laws of the State of California, with its office and place of business located at 400 South A Street, Oxnard, Calif. Respondent is engaged in the business of selling and distributing lima beans.

PAR. 2. In the course and conduct of its business respondent sells and distributes a substantial portion of its products directly to buyers purchasing for their own account, many of whom are located in States of the United States other than the State of California. Pursuant to such sales and respondent's instructions, such products are caused to be shipped and transported across State lines to such buyers located in various States of the United States.

PAR. 3. In connection with the sale and distribution of its products in interstate commerce as aforesaid, respondent, since June 19, 1936, has paid or granted, directly or indirectly, to such buyers, commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, upon purchases made for such buyers' own account.

CONCLUSION

The paying or granting by respondent 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 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 California Lima Bean Growers

Association, 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 lima beans 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 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.

IN THE MATTER OF

CONSUMERS HOME EQUIPMENT COMPANY, AND AVERY
B. CHERETON, HARRY H. CHERETON, H. H. GORDON,
AND E. MALLISON, AND MRS. HANNAH CHERETON, IN-
DIVIDUALLY AND AS A DIRECTOR OF CONSUMERS
HOME EQUIPMENT COMPANY

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

Docket 5174. Complaint, June 3, 1944—Decision, May 10, 1946

In a proceeding involving the alleged use of unlawful practices, in which the supporting evidence for the most part had to do with intrastate sales in the Detroit area by the concern's Detroit office; in which very little direct evidence was elicited from its various officers bearing on its over-all plan of operations, with its branch offices in several States; but in which there was evidence of several interstate transactions consisting of sales made out of its Detroit office to purchasers in Toledo, Ohio, sustaining some of the charges of misrepresentation sustained in the complaint; findings and order to cease and desist were limited to those practices which the evidence showed were performed in interstate as well as in intrastate commerce, since such evidence of the intrastate practices is competent to indicate the concern's general method of doing business, it should not, uncorroborated by evidence of use of similar practices in interstate commerce, supply the sole basis for a finding and order; it being noted that should later developments indicate that respondents are continuing to engage generally in those acts and practices which the evidence was limited to showing had been followed in the Detroit area, further proceedings in the public interest may be instituted.

Where a corporation, with 14 branch offices in 7 States; and 4 officers and directors thereof, who controlled and managed its affairs; engaged in interstate sale and distribution of silverware, mattresses, blankets, radios, towels, and other merchandise direct to the purchasing public, usually upon an installment basis, by and through house-to-house canvassers or agents, making use of a sales plan consisting of false representations and fraudulent schemes—

- (a) Exhibited to prospective purchasers samples of merchandise of a kind and quality different from that which they actually delivered; for example, representing that they were engaged in the sale and distribution of "International Silver" or "Community Silver," and making use of a set of the former as a sample; when in fact the silver actually delivered to the purchasers was "National Silver";
- (b) Represented falsely that their merchandise was limited in quantity or was being offered at a special sales price;
- (c) Represented that said merchandise was offered by them at a saving from prices charged by local retail stores; when in fact their prices were comparable to or higher than the usual and customary retail prices; and
- (d) Attempted to force the purchaser to accept and pay for the merchandise delivered, when the latter objected to it or notified them that it was not of