

Complaint

IN THE MATTER OF

EDWARD H. HAMLIN DOING BUSINESS AS E. H. HAMLIN
COMPANY

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 5189. Complaint, July 15, 1944—Decision, May 16, 1946

Where an individual engaged through his corporation in interstate sale and distribution of canned salmon and other seafood products to certain buyers who, though they purchased in their own names and for their own accounts, and were in some cases large scale buyers and sellers under their own private brands, shopped the market, filed claims in their own names and collected damages from carriers for their own accounts, and warehoused their goods and borrowed thereon, customarily designated themselves as "brokers," "merchandise brokers," or "primary distributors," solely to color their operations in order to collect commission fees from sellers, and operated by placing orders with those sellers only who would grant and pay them commissions or brokerage fees on their own purchases;

Paid and granted commissions, brokerage, or other compensation or allowances or discounts in lieu thereof to such buyers on purchases made in their own names and for their own accounts for resale:

Held, That such paying and granting by said individual, directly or indirectly, of commissions, brokerage, etc., to buyers who purchased his 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.

Padden & Moriarty, of Seattle, Wash., 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, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Edward H. Hamlin, is an individual engaged in the business of distributing and selling canned salmon and other sea-food products under the name and style of E. H. Hamlin Co., a corporation organized by the respondent Edward H. Hamlin and existing under the laws of the State of Washington, with his principal office and place of business located in the Mutual Life Building, in Seattle, Wash. The respondent Edward H. Hamlin is the sole owner

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of each share of capital stock in said corporation, with the exception of one qualifying share and he actively manages and exercises full and complete control of the business.

PAR. 2. The respondent in the course and conduct of his said business, since June 19, 1936, has sold and distributed a substantial portion of his canned salmon and other sea-food products in the name of E. H. Hamlin Co., for respondent's own account for resale directly to buyers located in States other than the State in which the respondent is established, and as a result of said sales and the respondent's instructions, such canned salmon and other sea-food products are shipped and transported across State lines to such buyers who are located in various States of the United States, other than the State where the respondent is established, and the respondent has been and is now paying or granting or has paid or granted, directly or indirectly, commissions, brokerage or other compensations or allowances or discounts in lieu thereof to such buyers of said canned salmon and other sea-food products.

PAR. 3. The respondent, since June 19, 1936, has distributed and sold and distributes and sells canned salmon and other sea-food products directly to certain buyers in interstate transactions as aforesaid and has paid to such buyers commissions or brokerage fees on purchases made by them in their respective names and for their respective accounts. The respondent's method of distribution and sale, as hereinafter illustrated, is representative of the sales methods of a number of west coast distributors.

Such buyers customarily designate themselves as "brokers," "merchandise brokers," or as "primary distributors," although they are known to the trade as "buying brokers" or "speculative brokers." Such "buying brokers" or "speculative brokers" customarily operate by placing orders for merchandise with those sellers, and only with those sellers, who will grant and pay them commissions or brokerage fees on their own purchases. Some such buyers are large-scale buyers and sellers of merchandise distributed under their own private brands, which brands usually show the name and address of the buyer but not of the packer, and identify the merchandise as being the product of the particular buyer who owns the label.

Some such buyers customarily purchase their private brand salmon and other sea-food products from respondent and many other sellers and allowances or discounts in lieu thereof, as set forth above, are in chase such commodities under the same private brands from several competing sellers, placing their orders where they are able to secure the most favorable prices and terms.

Such buyers place their orders for merchandise with respondent

and other sellers, who, on receiving and accepting such orders, deliver the merchandise to a common carrier for delivery, but require that the buyer pay the purchase price as a condition precedent to the delivery of the merchandise. If such merchandise is lost or damaged in transit, such buyers file claims in their own names and collect damages from the carrier for their own account.

On receipt of the merchandise, such buyers insure such merchandise and warehouse it in their own warehouses or in public warehouses, and thereafter generally utilize the warehouse receipts covering the merchandise, together with the insurance contract, as collateral or security to obtain bank loans.

Such buyers mask these operations under the fictionalized designation of "brokers," "merchandise brokers," or "primary distributors," for the sole purpose of coloring the name and method of their operation in order to collect commissions or brokerage fees from respondent and from other sellers who will pay such buyers commissions or brokerage fees on their own purchases, notwithstanding the fact that it is well known to be the custom of such buyers to invoice and sell such merchandise in their own names, for their own accounts at their own prices, and on their own terms, and to assume full and complete credit risks.

PAR. 4. The acts and practices of the respondent in promoting sales of canned salmon and other sea-food products 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 (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 July 15, 1944, issued and subsequently served its complaint in this proceeding upon the respondent, Edward H. Hamlin, doing business as E. H. Hamlin Co., a corporation, charging him 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, the respondent filed a supplemental answer thereto admitting all the material allegations of fact set forth in said complaint and waiving intervening proceedings and further hearings as to said facts. There-

after, this proceeding regularly came on for final hearing before the Commission upon said complaint and supplemental answer thereto, 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, Edward H. Hamlin, is an individual engaged in the business of distributing and selling canned salmon and other sea food products under the name and style of E. H. Hamlin Co., a corporation organized by the respondent, Edward H. Hamlin, and existing under the laws of the State of Washington, with his principal office and place of business located in the Mutual Life Building, in Seattle, Wash. The respondent, Edward H. Hamlin, is the sole owner of each share of capital stock in said corporation, with the exception of one qualifying share, and he actively manages and exercises full and complete control of the business.

PAR. 2. The respondent is now, and for several years prior hereto has been engaged in the sale and distribution of canned salmon and other sea-food products in the name of E. H. Hamlin Co. Respondent causes said canned salmon and other sea-food products, when sold by him, to be transported from his aforesaid place of business in the State of Washington 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 canned salmon and other sea-food products in commerce among and between the various States of the United States.

PAR. 3. The respondent, since June 19, 1936, in connection with the sale of his canned salmon and other sea-food products in interstate commerce, has sold sea-food products to certain buyers who purchase respondent's food products in their own names and for their own accounts for resale. During the time mentioned herein, respondent has paid or granted to such buyers, directly or indirectly, commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, on purchases made in their own names and for their own accounts for resale.

Such buyers customarily designate themselves as "brokers," "merchandise brokers," or as "primary distributors," although they are known to the trade as "buying brokers" or "speculative brokers." Such "buying brokers" or "speculative brokers" customarily operate

by placing orders for merchandise with those sellers, and only with those sellers, who will grant and pay them commissions or brokerage fees on their own purchases. Some such buyers are large-scale buyers and sellers of merchandise distributed under their own private brands, which brands usually show the name and address of the buyer but not of the packer, and identify the merchandise as being the product of the particular buyer who owns the label.

Some such buyers customarily purchase their private brand salmon and other sea-food products from respondent and many other sellers, and often during a given season, after shopping the market, will purchase such commodities under the same private brands from several competing sellers, placing their orders where they are able to secure the most favorable prices and terms.

Such buyers place their orders for merchandise with respondent and other sellers, who, on receiving and accepting such orders, deliver the merchandise to a common carrier for delivery, but require that the buyer pay the purchase price as a condition precedent to the delivery of the merchandise. If such merchandise is lost or damaged in transit, such buyers file claims in their own names and collect damages from the carrier for their own accounts.

On receipt of the merchandise, such buyers insure such merchandise and warehouse it in their own warehouses or in public warehouses, and thereafter generally utilize the warehouse receipts covering the merchandise, together with the insurance contract, as collateral or security to obtain bank loans.

Such buyers mask these operations under the fictionalized designation of "brokers," "merchandise brokers," or "primary distributors," for the sole purpose of coloring the name and method of their operation in order to collect commissions or brokerage fees from respondent and from other sellers who will pay such buyers commissions or brokerage fees on their own purchases, notwithstanding the fact that it is well known to be the custom of such buyers to invoice and sell such merchandise in their own names, for their own accounts, at their own prices, and on their own terms, and to assume full and complete credit risks.

CONCLUSION

The paying and granting by the respondent, directly or indirectly, of commissions, brokerage, or other compensation, and allowances or discounts in lieu thereof, to buyers of his canned salmon and other sea-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.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and supplemental answer of the respondent, which supplemental 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 (Clayton Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act):

It is ordered, That the respondent, Edward H. Hamlin, an individual trading as E. H. Hamlin Co., a corporation, and his agents, representatives, and employees, directly or through any corporate or other device in connection with the sale and distribution of canned salmon and other sea-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 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.

Complaint
IN THE MATTER OF
PERMA-RID, INC.

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

Docket 5244. Complaint, Nov. 2, 1944—Decision, May 16, 1946

Where a corporation engaged in the interstate sale and distribution of a cosmetic preparation which it designated "Perma-Rid"—

- (a) Falsely represented, through advertisements in newspapers and other advertising literature, that its said preparation permanently removed superfluous hair from the body, destroyed such hair thereby terminating its regrowth, and rejuvenated and beautified the skin, aided in the removal of blackheads, and reduced enlarged pores; when in fact its only action was that of a bleach and astringent; and
- (b) Falsely represented, through use of term "Perma-Rid" in its corporate name and a trade name for its said preparation, that the preparation would rid one of superfluous hair and that its effects were permanent;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, and of thereby inducing its purchase of substantial quantities of the preparation:

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.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. James I. Rooney and *Mr. Charles S. Cox* for the Commission.

Matot & Seelig, of Los Angeles, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Perma-Rid, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Perma-Rid, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 2947 North Forty-fifth Street, Milwaukee, Wis. The respondent is now, and for more than 2 years last past has been, engaged in the offering for sale, sale, and distribution of a certain cosmetic preparation designated as "Perma-Rid."