

Complaint

IN THE MATTER OF

WEST COAST PACKING CORPORATION ET AL.

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 APPROVED JUNE 19, 1936

Docket 5432. Complaint, Apr. 15, 1946—Decision, Sept. 5, 1946

Where a corporation and three officers thereof, engaged in the packing and interstate sale and distribution of fish and sea-food products, which they sold (1) through legitimate intermediaries who acted as their agents and to whom they paid commissions and brokerage fees for the services so rendered; (2) to direct buyers and so-called "buying brokers" who in fact purchased in their own names and for their own accounts; and (3) to direct buyers and "brokers", to whom they made fictitious "consignments", and upon whom they drew for payment in full prior to arrival of said "consignments" of their products, which said "consignee" buyers paid for and, at owner's risks and with full title, resold for their own accounts, at prices, terms, and conditions of sale determined by them, to firms and in quantities made known by said "consignee" buyers to said corporation and its officers—

- (a) Paid to said direct buyers and so-called "buyer brokers", first referred to, commissions, brokerage, or other compensation or allowances or discounts in lieu thereof, on said purchases made in their own names and for their own accounts for resale, (1) through allowing therefor on the face of the invoice, (2) through direct remittance, or (3) by invoicing said buyers at a net price which reflected commissions or brokerage, etc.; and
- (b) Paid brokerage to aforesaid "consignee buyers" on said direct sales—the true nature of which they masked under the fictionalized designation of "consignments" in order to impart a color of legality to such brokerage payments—through remitting brokerage on such consigned products represented as resold by said buyers:

Held. That the paying and granting, directly or indirectly, of commissions, brokerage, or other compensation or allowances or discounts in lieu thereof to buyers of their food products, who purchased such products in their own name and for their own account for resale as above set forth, were in violation of subsection 2 (c) of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Ekdale & Shallenberger, of San Pedro, Calif., 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

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the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent West Coast Packing Corp. is a corporation under the laws of the State of California, with its principal office and place of business at Long Beach, Calif. It was incorporated February 3, 1919, as the Italian Food Products Co., Inc., but by certificate of amendment to its articles of incorporation filed January 23, 1942, with the Secretary of State of California, changed its name from Italian Food Products Co. Inc., to West Coast Packing Corp. Respondents Albert Vignolo, Sr., Eugene Giacomino and Albert Vignolo, Jr., are president, vice-president, general manager and treasurer, respectively of the corporate respondent, and as such are responsible for and have participated in the acts and practices of said corporate respondent hereinafter charged as being unlawful.

PAR. 2. Respondents are now and have been since June 19, 1936, engaged in the business of buying, packing and selling, and distributing fish and fish products, sea food, and sea food products, and in the course and conduct of such business, respondents have sold, distributed, transported and caused to be transported, and now sell, distribute, transport and cause to be transported, such products in interstate commerce between the State of California and other States of the United States, and there is now and there has been since June 19, 1936, a constant current of trade and commerce conducted by said respondents in such fish and sea-food products between and among the various States of the United States.

PAR. 3. Respondents sell and distribute some of their fish and sea-food products through legitimate brokers or intermediaries who act as respondents' agents in finding buyers for respondents' products and in negotiating sales thereof at respondents' list prices and for such services respondents pay such legitimate brokers or intermediaries commissions or brokerage fees. Such transactions are not challenged by this complaint. Since June 1936 respondents have also sold their products in commerce directly to buyers and buying brokers, and on such sales, have paid or granted and are now paying and granting directly or indirectly to such direct buyers commissions, brokerage or other compensation, allowances or discounts in lieu thereof. Respondents have accomplished this either by allowance thereof on the face of the invoice, by direct remittance to such buyers, or by invoicing such buyers at a net price which reflected such commissions, brokerage, allowances, or discounts in lieu thereof. In each such case, such buyers and buying brokers have purchased respondents' products from the latter in such buyers' own names and for their own accounts, taking

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title thereto and assuming and exercising all control, rights, and risks of ownership thereafter, and in the resale by them of such products.

Since June 1936 respondents have also sold and distributed their fish or sea-food products in commerce on fictitious "consignments" to direct buyers and buying brokers, in which transactions respondents would ship "on consignment" to such buyers, and before arrival of such "consignment" draw draft on such "consignee" for payment in full. These fictitious "consignments" are, in fact, sales, and the fictitious "consignees," are in fact, buyers of respondents' products. Such buyers pay for and take full title to respondents' products, assume all risks incident to ownership, and resell such products for their own accounts, at prices, terms, and conditions of sale determined by such buyers. The latter then notify respondents of the quantities resold and the names of the firms to whom such buyers have resold such products; whereupon respondents remit brokerage thereon to such "consignee" buyers. Respondents mask these direct selling operations under the fictionalized designation of "consignments" for the purpose of concealing their true nature in order to impart a color of legality to the brokerage payments made by them on such sales to such "consignee" buyers.

PAR. 4. The acts and practices of respondents as set out and described hereinabove, except those described in the first subparagraph of paragraph 3, 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 15, 1946, issued and subsequently served its complaint in this proceeding upon the respondents, West Coast Packing Corp., a corporation, Albert Vignolo, Sr., Eugene Giacomino, and Albert Vignolo, Jr., individually and as officers of the West Coast Packing Corp., charging them 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 respondents filed 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 the Commission upon said complaint and answer filed by the respond-

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ents; 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 West Coast Packing Corporation is a corporation under the laws of the State of California, with its principal office and place of business at Long Beach, Calif. It was incorporated February 3, 1919, as the Italian Food Products Co., Inc., but by certificate of amendment to its articles of incorporation filed January 23, 1942, with the Secretary of State of California, changed its name from Italian Food Products Co., Inc., to West Coast Packing Corp. Respondents Albert Vignolo, Sr., Eugene Giacomino, and Albert Vignolo, Jr., are president, vice president, general manager and treasurer, respectively, of the corporate respondent, and as such are responsible for, and have participated in, the acts and practices of said corporate respondent hereinafter described.

PAR. 2. Since June 19, 1936, the respondents have been engaged in the business of packing and in the sale and distribution of fish and seafood products. Respondents cause said food products, when sold by them, to be transported from their aforesaid place of business in the State of California to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said food products in said commerce among and between the various States of the United States.

PAR. 3. Respondents sell said food products through legitimate intermediaries who act as their agents and to whom are paid commissions and brokerage fees for the services so rendered. In addition, the respondents also sell their food products to direct buyers and to so-called "buying brokers," who in fact purchase from respondents in their own names and for their own accounts.

PAR. 4. The respondents since June 19, 1936, in connection with the sale of their food products in interstate commerce, have sold their food products to direct buyers and so-called "buying brokers," who purchase respondents' food products in their own names and for their own accounts for resale. During the times mentioned herein respondents have paid or granted to such direct buyers and so-called "buying brokers," directly or indirectly, commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, on such purchases made in their own names and for their own accounts for resale.

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Respondents have accomplished this either by allowance thereof on the face of the invoice, by direct remittance to such buyers, or by invoicing such buyers at a net price which reflects such commissions or brokerage, or allowances or discounts in lieu thereof. In each such case such buyers and buying brokers have purchased said food products from the respondents in their own names and for their own accounts, taking title thereto and assuming and exercising all control, rights, and risks of ownership.

In addition, respondents, since June 16, 1936, have also sold and distributed their food products in interstate commerce on fictitious "consignments" to direct buyers and buying brokers, in which transactions respondents would ship "on consignment" to such buyers and, before arrival of such "consignment," draw draft on such "consignee" for payment in full. These fictitious "consignments" are in fact sales and the fictitious "consignees," buyers of respondents' products. Such buyers pay for and take full title to respondents' products, assume all risks incident to ownership, and resell such products for their own accounts at prices, terms, and conditions of sale determined by such buyers. The latter then notify respondents of the quantities resold and the names of the firms to which such buyers have resold such products, whereupon respondents remitted brokerage thereon to such "consignee" buyers. Respondents mask these direct selling operations under the fictionalized designation of "consignments" for the purpose of concealing their true nature in order to impart a color of legality to the brokerage payments made by them on such sales to such "consignee" buyers.

CONCLUSION

The paying and granting by the respondents, directly or indirectly, of commissions, brokerage, or other compensation and of allowances or discounts in lieu thereof to buyers of their 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 answer of the respondents, which answer admits all the material allegations of fact set forth in said complaint and waives all intervening procedure and further hearings as to said facts; and the Commission having made its find-

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ings as to the facts and its conclusion that said 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 an Act of Congress approved June 19, 1936 (Robinson-Patman Act) :

It is ordered, that the respondent West Coast Packing Corp., a corporation, and its respective officers, and the respondents Albert Vignolo, Sr., Eugene Giacomino, and Albert Vignolo, Jr., individually and as officers of said corporate respondent, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the sale and distribution of fish and 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 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.

Syllabus

IN THE MATTER OF

FRONTIER ASTHMA COMPANY, INC. ET AL

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

Docket 3935. Complaint, Apr. 3, 1941¹—Decision, Sept. 12, 1946

Where a corporation, three officers thereof who formulated its policies and directed its business practices, and five associated physicians, cooperatively engaged in the advertisement and interstate sale and distribution of medicinal preparations intended for use in the treatment of asthma, which were made up of substantially the same ingredients, in the "regular" strength, the "strong", and the "minus", in 4-gallon batches; through advertisements in newspapers, periodicals, circulars and other advertising material, directly or by implication—

(a) Represented falsely that their said preparations were a cure or remedy and a competent and effective treatment for asthma, and that they built up the system and prevented attacks of asthma;

The facts being that said preparations had no therapeutic value beyond affording a measure of temporary relief from the paroxysms of asthma through the tendency of the three iodide ingredients to liquify the mucus which is largely responsible for such outward manifestations;

(b) Represented that said preparations were safe and harmless and might be used without danger of ill effects upon health;

The facts being that, by virtue of the potassium iodide ingredient, they were likely to be harmful to those having goiter through the tendency of said ingredient to convert a benign adenoma into a toxic one; in cases of arrested tuberculosis potassium iodide tends to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process, and in active tuberculosis, tends to prevent or retard the healing process; and

(c) Failed to reveal facts material in the light of the aforesaid representations and with respect to consequences which might result from the use of said preparations under prescribed or usual conditions in that their advertisements contained no statement to the effect that said preparations should not be used by those having goiter or tuberculosis in either the active or arrested stage;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby cause it to purchase substantial quantities thereof;

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.

As respects contention that respondents were not engaged in interstate commerce under the circumstances concerned in a proceeding involving alleged misrepresentation of certain medicinal preparations and false advertisement thereof in newspapers, periodicals, circulars, etc., and the transportation thereof from respondents' place of business to purchasers in other states and in the District of Columbia; and in which it appeared that—

¹ Amended and supplemental.