

Complaint

IN THE MATTER OF

HIGH SEAS TUNA PACKING 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. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5428. Complaint, Mar. 27, 1946—Decision, Oct. 2, 1946

Where a corporation engaged in the packing of fish and fish products, particularly tuna and mackerel, and in the interstate sale and distribution thereof, in part through brokers or intermediaries who acted as its agents and to whom it paid commissions or brokerage fees for such services—

Granted and paid commissions or brokerage fees on purchases by direct buyers who purchased from it in their own names and for their own accounts for resale, assuming all rights and risks of ownership:

Held, That such acts and practices in paying or granting commissions or brokerage fees to purchasers of its products, constituted violations of subsection (c) of section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. John V. Morris, of Terminal Island, 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 11, 1941, 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 High Seas Tuna Packing Co., Inc., is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 2802 Canon Street, Point Loma, San Diego, Calif.

PAR. 2. Respondent is now engaged and since 1941 has been engaged in the business of buying, packing, selling, and distributing fish, particularly tuna and mackerel, and fish products in its own name and for its own account. Respondent sells and distributes these products principally through brokers or intermediaries who act as respondent's agents in finding buyers for respondent's products, in negotiating their sale at respondent's prices and for such services respondent pays such brokers or intermediaries commissions or brokerage fees. Such transactions are not challenged by this complaint. Respondent, however, also sells its products directly to other

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buyers, involving shipments in commerce, particularly the French Sardine Co. of Terminal Island, Calif., and Lang & Stroh Co., 204 Davis St., San Francisco, Calif., and on such sales, respondent pays to such buyers, directly or indirectly, commissions or brokerage fees.

PAR. 3. Respondent in the course and conduct of its business as described has sold, distributed and transported, and generally does sell, distribute, and transport, its fish products in commerce between the State of California and other States of the United States.

PAR. 4. Respondent since 1941 in connection with the interstate sale, distribution and shipment of its fish products has been and is now paying or granting, directly or indirectly, commissions, brokerage or other compensation, allowances or discounts in lieu thereof to French Sardine Co. and Lang & Stroh Co., each of which purchased said fish products from respondent in its own name and for its own account, taking title thereto and assuming all rights and risks of ownership thereafter and in the resale of such products.

PAR. 5. The aforesaid acts and practices of respondent in paying or granting to purchasers of its products, directly or indirectly, commissions, brokerage or other compensation and allowances or discounts in lieu thereof, as set out hereinabove, 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 act approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on March 27, 1946, issued and subsequently served its complaint in this proceeding upon High Seas Tuna Packing Co., Inc., a corporation, charging said respondent with violation of the provisions of subsection (c) of section 2 of the Clayton Act as amended. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to the facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and substitute 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, High Seas Tuna Packing Co., Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 2802 Canon Street, Point Loma, San Diego, Calif. It is now, and since 1941 has been, engaged in the business of packing, selling, and distributing fish and fish products, particularly tuna and mackerel.

PAR. 2. In the course and conduct of its aforesaid business, respondent has, directly and indirectly, sold and distributed its fish and fish products to buyers located in States other than the State of California, and has caused such products, when sold, to be transported to purchasers thereof at points of location in States other than the State of California, and has maintained a course of trade in said products in commerce, as "commerce" is defined in the Clayton Act as amended.

PAR. 3. Respondent sells and distributes some of its fish products through brokers or intermediaries who act as its agents in finding buyers for such products and in negotiating sales at respondent's prices, and for these services respondent pays such brokers or intermediaries commissions or brokerage fees. Respondent, however, sells some of its fish products directly to buyers, including the French Sardine Co., Terminal Island, Calif., and Lang & Stroh, 204 Davis Street, San Francisco, Calif. These direct buyers purchase fish products from respondent in their own names and for their own accounts, take title thereto, and assume all rights and risks of ownership thereafter and in the resale of such products. Respondent grants and pays to these direct buyers commissions or brokerage fees on their purchases, and many of such sales in connection with which such brokerage fees or commissions are paid involve shipment by respondent of its fish and fish products in commerce, as "commerce" is defined in the Clayton Act as amended.

CONCLUSION

The aforesaid acts and practices of respondent in paying and granting, directly or indirectly, to purchasers of its products commissions or brokerage fees constitute violations 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 the substitute answer of respondent, in which answer respondent admits all the material allegations of fact set out in said complaint and waives all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions 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 act approved June 19, 1936 (the Robinson-Patman Act) :

It is ordered, That respondent, High Seas Tuna Packing Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale or distribution of fish, fish products, or other merchandise in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from :

Paying or granting, directly or indirectly, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, to any purchaser upon purchases for his own account, or to any agent, representative, or other intermediary acting in fact for or in behalf of or subject to the direct or indirect control of the purchaser to whom sale is made.

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.

Complaint

IN THE MATTER OF

GATTIS CHEMICAL COMPANY

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

Docket 5014. Complaint, July 20, 1943—Decision, Oct. 3, 1946

Where a corporation engaged in the interstate sale and distribution of a medicinal preparation designated "Gattis K and B Pills"; through radio continuities, leaflets, pamphlets and other advertising, directly and by implication—

- (a) Falsely represented that its said preparation was a cure or remedy, and constituted an effective treatment, for kidney disorders and diseases; and
- (b) Failed to reveal facts material in the light of the aforesaid representations and that the use of said preparation under prescribed or usual conditions might result in injury to health, in that the podophyllin contained therein was an irritant laxative, might result in rupture of the appendix, if taken by a person having appendicitis, and was therefore potentially dangerous when taken by one suffering from abdominal pains, nausea, vomiting or other symptoms of said condition;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and that its preparation might be taken without ill effects, and thereby to induce purchase thereof:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. S. F. Rose for the Commission.

Hildrop & Mayfield, of Nashville, Tenn., 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 Gattis Chemical Co., 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 Gattis Chemical Co. is a corporation organized and existing under and by virtue of the laws of the State of