

Complaint

43 F. T. C.

IN THE MATTER OF
FRENCH SARDINE COMPANY OF CALIFORNIA

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUB-SEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914 AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5456 Complaint, Aug. 5, 1946—Decision, Oct. 7, 1946

Where a corporation engaged in the packing of canned sea food products, principally canned sardines, and in the interstate sale and distribution thereof (1) through legitimate intermediaries who acted as its agents and to whom it paid commissions and brokerage fees for such services, and (2) to direct buyers, in some cases designating themselves "brokers," who, contrary to the operations of a broker, purchased for their own accounts for resale, transmitted their own purchase orders direct to said corporation—which invoiced such buyers and collected the purchase price therefrom—warehoused commodities, and insured them at their own expense and in their own names and for their own accounts, taking title and assuming all risk incident to ownership—

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

Held, That the paying and granting by it, directly or indirectly, of commissions or brokerage, etc., to buyers of its products who purchased in their own names and for their own accounts for resale, as above set forth, constituted a violation 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 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 (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, French Sardine Co. of California, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 171-181 Fish Harbor Wharf, Terminal Island, Calif.

PAR. 2. The respondent, since June 19, 1936, has been, and is now, engaged in the business of packing, selling, and distributing canned sea-food products, principally canned sardines, canned tuna, and

canned mackerel and other sea-food products (all of which are hereinafter designated as sea-food products) for its own account for resale.

PAR. 3. The respondent sells and distributes its sea-food products by two separate and distinct methods. The first and principal method is by utilizing intermediaries or brokers who act as respondent's agents in negotiating the sale of its sea-food products at respondent's prices and on respondent's terms and for which services to respondent such intermediaries or brokers are paid commissions or brokerage fees. This method of distributing respondent's commodities is not challenged by this complaint.

The second method, which is challenged by this complaint, is by the sale by respondent of its sea-food products direct to buyers who are paid by respondent, directly or indirectly, commissions or brokerage fees on such purchases. All such buyers referred to herein are "direct buyers." In transactions between respondent and such buyers the respondent does not use intermediaries or brokers.

Such direct buyers transmit their own purchase orders for such sea-food products directly to the respondent. The respondent thereafter invoices and ships such commodities to such buyers from whom respondent collects the purchase price of the merchandise.

Some such buyers, upon receipt of such sea-food products from respondent, 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. Some such direct buyers designate themselves as brokers but are not brokers in fact. Contrary to the manner in which a broker operates such buyers purchase and resell for their own account taking title to and assuming all risk incident to ownership.

PAR. 4. The respondent, since June 19, 1936, in the course and conduct of its said business, has sold and distributed a substantial portion of its sea-food products through intermediaries or brokers to buyers, and also directly to buyers located in States other than the State in which respondent is located, and as a result of said sales and the respondent's instructions such commodities have been shipped and are now shipped and transported across State lines to such buyers so located.

PAR. 5. The respondent, since June 19, 1936, in connection with the interstate sale of its sea-food products has been, and is now, paying or granting, or has 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 respondent's sea-food products. Such buyers have purchased respondent's sea-food prod-

ucts in their own name and for their own respective accounts for resale.

PAR. 6. The acts and practices of the respondent, French Sardine Co. of California, a corporation, in promoting the sale of its sea-food products by paying to buyers, directly or indirectly, commissions, brokerage or other compensation or 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 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 August 5, 1946, issued and subsequently served its complaint in this proceeding upon the respondent, French Sardine Co. of California, a corporation, charging it 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 an answer thereto 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 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, French Sardine Co. of California, is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 171-181 Fish Harbor Wharf, Terminal Island, Calif.

PAR. 2. The respondent, since June 19, 1936, has been, and is now, engaged in the business of packing, selling, and distributing canned sea-food products, principally canned sardines, canned tuna, and canned mackerel and other sea-food products, all of which are hereinafter referred to as "sea-food products."

PAR. 3. Respondent causes said sea-food products, when sold by it, to be transported from its aforesaid place of business in the State of California to purchasers thereof located in various other States of

190

Order

the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said sea-food products in commerce among and between the various States of the United States.

PAR. 4. Respondent sells said sea-food products through legitimate intermediaries who act as its agents and to whom are paid commissions and brokerage fees for the services so rendered. In addition, respondent also sells its sea-food products to direct buyers who purchase for their own accounts for resale.

PAR. 5. The respondent, since June 19, 1936, in connection with the sale of its sea-food products in interstate commerce, has sold its sea-food products to direct buyers who purchase respondent's sea-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 direct buyers, directly or indirectly, commissions or brokerage, or other compensation, allowances, or discounts in lieu thereof, on such purchases made in their own names and for their own accounts for resale.

Such direct buyers transmit their own purchase orders for sea-food products direct to respondent who invoices and ships such sea-food products direct to such buyers and collects the purchase price from them. Some of such buyers, upon receipt of such sea-food products from respondent, 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 accounts against contingent loss or damage. Some such direct buyers designate themselves as "brokers" but are not brokers in fact. Contrary to the manner in which a broker operates, such buyers purchase and resell for their own accounts, taking title to and assuming all risk incident to ownership.

CONCLUSION

The paying and granting by the respondent, directly or indirectly, of commissions or brokerage, or other compensation, allowances, or discounts in lieu thereof, to buyers of its sea-food products who purchase such sea-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 respondent, which answer admits all the material allegations of fact set forth in said complaint and waives all intervening procedure and

Order

13 F. T. C.

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 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act) :

It is ordered, That the respondent, French Sardine Co. of California, 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 canned sardines, canned tuna, and canned mackerel 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 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

FRANK M. CONKLIN, TRADING AS BEAU PEEP
PRODUCTS

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

Docket 5435. Complaint, Apr. 22, 1946—Decision, Oct. 8, 1946

Where an individual engaged in the interstate sale and distribution of a product designed for the cleaning of babies' white shoes; through advertisements in periodicals or newspapers and in other advertising media, directly and by implication—

Represented that his said product would not rub off and was safe; that no dust particles or powder would rub off or result from shoes treated with the product, so as to create an allergic reaction or condition affecting human beings; that it had been subjected to heat treatment sufficient to destroy all bacteria, and that even were a baby to chew or put into its mouth shoes treated with its said cleaner there would be no danger of infection; and that such sterility or freedom from bacteria remained unchanged in the product even after it had been subjected to use in the customary manner;

The facts being that said product, when applied to baby shoes, would absorb any harmful bacteria present on the dauber, cloth or leather of the shoe; it was not nonallergic, in that it was not a substance to which no individuals would or could exhibit allergy; it would rub off after having been applied to leather or cloth and subjected to a rubbing action; and it was not pasteurized in the sense that it was completely sterile, or free from harmful bacteria since it lost any condition of sterility after it had been subjected to customary use;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby to induce purchase of substantial quantities of said product:
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. Morton Nesmith for the Commission.

O'Hara, Junge & Lehman, of Chicago, Ill., 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 Frank M. Conklin, individually and trading as Beau Peep Products, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows: