

IN THE MATTER OF

CALIFORNIA MARINE CURING AND PACKING CO., MAX
JOSEPH GORBY, JACK GORBY, AND ANNA GORBY

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 5462. Complaint, Sept. 25, 1946—Decision, Feb. 13, 1947

Where a corporation and the three individuals who were its officers, directors and substantial stockholders, engaged in packing, selling and distributing sea-food products consisting, principally, of sardines, tonno, mackerel and tuna (1) to and through its corporate exclusive agent, to which it paid brokerage fees of 3 percent on all sales where no other broker was employed, and 5 percent when the agent utilized the services of a subbroker, and which agent was also free to, and did, purchase said sea-food products for its own account at a trade discount equal to such brokerage; and (2) directly to intra-state packers and distributors, and also, through them, as agents, to interstate buyers;

Granted and allowed, directly or through said agent and other packers and distributors, or otherwise, commissions or brokerage fees to interstate buyers who purchased sea-food products for their own accounts for resale, under a course of conduct by which said buyers transmitted their own purchase orders directly to said corporation and individuals, or to them through their agent, and said sellers prepared delivery orders, contracts for transportation and bills of lading, and shipped the products concerned directly to such buyers, and, through their agent collected payment from them, who, though designating themselves as brokers or subbrokers and known to the trade generally as "buying brokers", did not in said transactions function as such, but purchased for resale on their own accounts, as above stated:

Held, That such paying and granting by said corporation and individuals, directly or indirectly, of commissions, brokerage or other compensation, and of allowances or discounts in lieu thereof, to buyers who purchased 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.

Lovell & Richardson, of San Francisco, 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 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-Fatman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, California Marine Curing & Packing Co., is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 709 Ways Street, Terminal Island, Calif., and is engaged in the business of packing, selling, and distributing sea-food products, principally sardines, tonno, mackerel, and tuna, hereinafter designated sea-food products.

PAR. 2. Respondent, Max Joseph Gorby, is an individual, of no known or disclosed home address, but whose business address is 709 Ways Street, Terminal Island, Calif. He is now president and a director of California Marine Curing & Packing Co., and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time and for some time past as president and director, respondent Max Joseph Gorby has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 3. Respondent, Jack Gorby, is an individual residing at 3526 West 85th Street, Inglewood, Calif. He is a brother of Max Joseph Gorby, who is president and a director of California Marine Curing & Packing Co., and is himself vice president and director of the California Marine Curing & Packing Co., and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time and for some time past as vice president and director, respondent has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of the distribution and sales policies.

PAR. 4. Respondent, Anna Gorby, is an individual residing at 2190 Eucalyptus Street, Long Beach, Calif., and at 209 S. Alta Vista, Beverly Hills, Calif. Respondent Anna Gorby is the mother of respondent Max Joseph Gorby and respondent Jack Gorby.

Respondent, Anna Gorby, is secretary and treasurer and is also a director of California Marine Curing & Packing Co., and has been a substantial stockholder, and an officer of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time and for some time past as secretary-treasurer and director, respondent Anna Gorby has exercised, and still exercises, a substantial

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degree of authority and control over the business conducted by said corporation, including the direction of the distribution and sales policies.

PAR. 5. Respondent, California Marine Curing & Packing Co., at some time since June 19, 1936, contracted with Parrott & Co. of San Francisco, Calif., to act as its exclusive agent to sell and distribute its sea food products in the markets of the United States. The respondent agreed to pay, and paid, its agent, commissions or brokerage fees of three percent on all sales made by said agent, where no other broker was employed by said exclusive agent, and five percent when the agent utilized the services of a subbroker in making sales. The respondent further agreed that its exclusive agent, Parrott & Co., may purchase any and all of respondent's sea food products for its own account, and that on such purchases Parrott & Co. shall receive a "trade discount" equal to the commissions or brokerage provided for sales made by Parrott & Co. as agent. Respondent's agent did purchase under said conditions and terms.

The respondent during a period since June 19, 1936, with the knowledge and consent of its exclusive agent, Parrott & Co., also sold and distributed a small quantity of its sea food products directly to intrastate packers and distributors, and also through such packers and distributors, as its agent, to interstate buyers. On such sales to and through such packers and distributors, respondent paid commissions and brokerage fees directly or indirectly to the buyers of said merchandise.

PAR. 6. Respondent, California Marine Curing & Packing Co., since June 19, 1936, has granted and allowed directly or through its duly appointed and legally constituted agent, Parrott & Co., and through other packers and distributors, or otherwise, commissions or brokerage fees to interstate buyers of its sea food products who purchased such merchandise for their own accounts for resale.

PAR. 7. The respondents in the course and conduct of their said business since June 19, 1936, have sold and distributed a substantial portion of their sea food products directly or through its exclusive agent, Parrott & Co., or through other packers and distributors, or otherwise, to buyers located in States other than the State in which respondents are located, and as a result of said sales and the respondent's instructions such sea food products have been shipped and transported, and are now being shipped and transported, across State lines to such buyers so located.

PAR. 8. The respondents since June 19, 1936, have sold and distributed their sea food products, through their exclusive agent, and others, by two separate and distinct methods.

The first method is by direct sale to their exclusive agent, Parrott & Co., and to other intrastate packers and distributors who purchased said sea-food products, and accepted local intrastate delivery. The respondent granted such intrastate buyers directly or indirectly commissions or brokerage fees on such purchases. This method of distribution is not challenged herein.

Respondents' second and principal method of sale and distribution of their sea-food products was by sale to buyers. These buyers designate themselves as brokers but in such transactions do not function as brokers or subbrokers, but purchase for resale on their own account. The respondents paid such buyers directly or indirectly commissions or brokerage fees on such purchases. Such buyers who purchase respondents sea-food products through respondents exclusive agent, or direct, are generally known to the trade as "buying brokers."

A representative but by no means complete list of respondents' interstate "buying brokers" or direct buyers to whom respondents, since June 19, 1936, have granted and allowed, directly or indirectly, commissions or brokerage fees on purchases made for such buyers' own accounts are:

T. W. Holt,	Christian Brokerage Co.,
Jacksonville, Fla.	Atlanta, Ga.
Foote Bros.,	Hutchings Brokerage Co.,
Norfolk, Va.	Mobile, Ala.
Wm. H. Stanley, Inc.,	S. W. Tidwell,
New York, N. Y.	Huntsville, Ala.
Glover & Wilson,	Haas-Guthman,
Little Rock, Ark.	Savannah, Ga.
A. J. Siebert,	Southeastern Brokerage Co.,
Louisville, Ky.	Wilmington, N. C.
Butler Brokerage Co.,	J. P. Reaves Brokerage Co.,
Marianna, Fla.	Montgomery, Ala.
R. G. La Faye,	Koehler, Spalding Co., Inc.,
New Orleans, La.	Louisville, Ky.

Such buyers transmit their own purchase orders for sea-food products directly to the respondent or to the respondent through the respondent's agent, Parrott & Co. The respondent thereafter prepares delivery orders, contracts for transportation, prepares bills of lading and ships such sea-food products directly to such buyers from whom the respondent, through its agent, Parrott & Co., collects the purchase price of the merchandise. These transactions, including the aforesaid payment of brokerage and commissions, are made in interstate commerce and involve interstate shipments of said sea-food products.

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PAR. 9. The paying and granting of commissions or brokerage fees, directly or indirectly, by respondent California Marine Curing & Packing Co., a corporation, acting by and through its president and director, respondent Max Joseph Gorby, its vice president and director, respondent Jack Gorby, and its secretary-treasurer and director, respondent Anna Gorby, to interstate buyers in the course of interstate commerce on purchases made for such buyers' own accounts in the manner and under the circumstances hereinabove set forth, are in violation of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

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 September 25, 1946, issued and subsequently served its complaint in this proceeding upon the respondents, California Marine Curing & Packing Co., a corporation, and Max Joseph Gorby, individually and as president and director, Jack Gorby, individually and as vice president and director, and Anna Gorby, individually and as secretary-treasurer and director of California Marine Curing & Packing Co., 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 their answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure, including hearings as to the facts, the filing of briefs, trial examiner's report, and oral argument. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint and answer filed by the respondents, 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, California Marine Curing & Packing Co., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at

709 Ways Street, Terminal Island, Calif., and is engaged in the business of packing, selling, and distributing sea-food products, principally sardines, tonno, mackerel, and tuna, hereinafter designated "sea-food products."

PAR. 2. Respondent, Max Joseph Gorby, is an individual, of no known or disclosed home address, but whose business address is 709 Way Street, Terminal Island, Calif. He is now president and a director of California Marine Curing & Packing Co., and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time and for some time past as president and director, respondent Max Joseph Gorby has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 3. Respondent, Jack Gorby, is an individual residing at 3526 West 85th Street, Inglewood, Calif. He is a brother of Max Joseph Gorby, who is president and a director of California Marine Curing & Packing Co., and is himself vice president and director of the California Marine Curing & Packing Co., and has been a substantial stockholder and an officer of said corporation since sometime after June 19, 1936. After becoming an officer, and at the present time and for some time past as vice president and director, respondent has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of the distribution and sales policies.

PAR. 4. Respondent, Anna Gorby, is an individual residing at 2190 Eucalyptus Street, Long Beach, Calif., and at 200 S. Alta Vista, Beverly Hills, Calif. Respondent Anna Gorby is the mother of respondent Max Joseph Gorby and respondent Jack Gorby.

Respondent Anna Gorby is secretary and treasurer and is also a director of California Marine Curing & Packing Co., and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time and for some time past as secretary-treasurer and director, respondent Anna Gorby has exercised, and still exercises a substantial degree of authority and control over the business conducted by said corporation, including the direction of the distribution and sales policies.

PAR. 5. Respondent, California Marine Curing & Packing Co., at some time after June 19, 1936, contracted with Parrott & Co. of San Francisco, Calif., to act as its exclusive agent to sell and distribute its sea-food products in the markets of the United States. Said respond-

ent agreed to pay, and paid, its agent commissions or brokerage fees of 3 percent on all sales made by said agent where no other broker was employed by said exclusive agent and 5 percent when the agent utilized the services of a subbroker in making sales. Said respondent further agreed that its exclusive agent, Parrott & Co., may purchase any and all of respondent's sea-food products for its own account and that on such purchases Parrott & Co. shall receive a trade discount equal to the commissions or brokerage provided for sales made by Parrott & Co. as agent. Respondent's agent did purchase under said conditions and terms.

Said respondent, during a period since June 19, 1936, with the knowledge and consent of its exclusive agent, Parrott & Co., also sold and distributed a small quantity of its sea food products directly to intrastate packers and distributors and also through such packers and distributors, as its agent, to interstate buyers. On such sales to and through such packers and distributors, said respondent paid commissions and brokerage fees directly or indirectly to the buyers of said merchandise.

PAR. 6. The respondents, in the course and conduct of their said business since June 19, 1936, have sold and distributed a substantial portion of their sea food products directly or through the corporate respondent's exclusive agent, Parrott & Co., or through other packers and distributors, or otherwise, to buyers located in States other than the State in which respondents are located, and as a result of said sales and the respondents' instructions such sea food products have been shipped and transported, and are now being shipped and transported, across State lines to such buyers so located.

PAR. 7. Respondent, California Marine Curing & Packing Co., since June 19, 1936, has granted and allowed, directly or through its duly appointed and legally constituted agent, Parrott & Co., and through other packers and distributors, or otherwise, commissions or brokerage fees to interstate buyers of its sea food products who purchased such merchandise for their own accounts for resale.

These buyers designate themselves as "brokers" but in such transactions do not function as brokers or subbrokers, but purchase for resale on their own account. The respondents paid such buyers, directly or indirectly, commissions or brokerage fees on such purchases. Such buyers who purchase respondents' sea food products through respondents' exclusive agent or direct are generally known to the trade as "buying brokers."

A representative but by no means complete list of respondents' interstate buying brokers or direct buyers to whom respondents, since June

19, 1936, have granted and allowed, directly or indirectly, commissions or brokerage fees on purchases made for such buyers' own accounts are:

T. W. Holt, Jacksonville, Fla.	Christian Brokerage Co., Atlanta, Ga.
Foote Bros., Norfolk, Va.	Hutchings Brokerage Co., Mobile, Ala.
Wm. H. Stanley, Inc., New York, N. Y.	S. W. Tidwell, Huntsville, Ala.
Glover & Wilson, Little Rock, Ark.	Haas-Guthman, Savannah, Ga.
A. J. Siebert, Louisville, Ky.	Southeastern Brokerage Co., Wilmington, N. C.
Butler Brokerage Co., Marianna, Fla.	J. P. Reaves Brokerage Co., Montgomery, Ala.
R. G. La Faye, New Orleans, La.	Koehler, Spalding Co., Inc. Louisville, Ky.

Such buyers transmit their own purchase orders for seafood products directly to the respondents or to the respondents through their agent, Parrott & Co. The respondents thereafter prepare delivery orders, contract for transportation, prepare bills of lading, and ship such sea-food products directly to such buyers from whom the respondents, through their agent, Parrott & Co., collect the purchase price of the merchandise. These transactions, including the aforesaid payment of brokerage and commissions, are made in interstate commerce and involve interstate shipments of said sea-food products.

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 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 respondents, which answer admits all the material allegations of fact

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set forth in said complaint and waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of subsection (c) of section 2 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):

It is ordered, That the corporate respondent, California Marine Curing & Packing Co., a corporation, and its officers, and the individual respondents, Max Joseph Gorby, Jack Gorby, and Anna Gorby, individually and as officers and directors of the corporate respondent, and their respective agents, representatives, and employees, directly or through any corporate or other device in connection with the sale and distribution of sardines, tonno, mackerel, tuna, and other sea-food products in commerce as "commerce" is defined in the afore-said 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.

Commissioner Mason not participating.

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IN THE MATTER OF

SAMUEL SCHREIBERSDORF ET AL. DOING BUSINESS AS
TRAVELLERS LUGGAGE CO.

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

Docket 5205. Complaint, Aug. 19, 1944—Decision, Mar. 14, 1947

Where seven partners engaged in the interstate sale and distribution, both at wholesale and at retail, of luggage and other items including golf equipment, brief cases, wallets, ladies' handbags, umbrellas, and fountain pens; and in issuing and furnishing, in connection with the operation of their retail store, certain "discount cards" which they caused to be distributed among members of the public, and usually delivered to personnel managers and purchasing agents of large industries and banking concerns located in New York City, for distribution among the latter's employees, and which set forth, in addition to the partners' trade name, address, etc. that "The bearer ----- employed by ----- is entitled to a special discount of 40 percent from our list price";

Represented through said cards that the recipients could, by use thereof, purchase merchandise at prices 40 percent lower than their customary retail prices, The facts being that they marked up the prices on their merchandise in such manner that after the purported discount was allowed, the remaining net prices represented the regular retail prices;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public aware of the recognized wholesaler's custom of quoting "list" or "catalog" prices which are subject to discount to retailers; with respect to the actual prices and values of their merchandise, and thereby to cause such public to purchase substantial quantities thereof:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. Henry W. Fried, of New York City, for respondents.

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 Samuel Schreibersdorf, Louis Schreibersdorf, Julius Schreibersdorf, Sidney Schreibersdorf, Saul Schreibersdorf, Joseph Schreibersdorf, and Bertha Schreibersdorf, trading as Travellers Luggage Co., a copartnership, hereinafter referred to as respondents, have violated the provisions of